[Mr. S. Parameswara Aiyar.]

(*b*) If so, will they be pleased to lay on the table a statement showing the names of the taluks in which such lands are situated, with their acreage?

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): (*a*) The Government have not accepted, in the case of a few swampy areas, the proposal of the committees that they should be disafforested.

(*b*) The member is referred to G. O's Nos. R. O. C. 700 A/23/Rev., Dis. 1590/23/Revenue, Dis. 691/24/Revenue, R. O. C. 700 A/23/Revenue, and Dis. 1544/24/Revenue, dated the 4th September 1923, 20th November 1923, 20th May 1924, 13th June 1924 and 17th October 1924, respectively, published in the *Government Gazette*.

*Punishment of Government Officers canvassing at Elections.*

126. MR. TARIATU KUNJITOMMAN (*Muvattupuzha*): Will the Government be pleased to issue stringent orders at once to the effect that they would severely punish Government officers who canvass for or against any candidate in the forthcoming elections?

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): The Member's attention is invited to Government notification No. 102 of 22/Legis., dated the 24th February, 1922, published in the *Government Gazette* dated the 28th *idem*. Government will publish a similar notification in due time on the eve of the forthcoming elections.

*University for Travancore.*

127. MR. TARIATU KUNJITOMMAN (*Muvattupuzha*): (*a*) Do the Government propose to establish a University in Travancore?

(*b*) Is the University proposed to be established for Kerala as a whole or for Travancore alone?

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): (*a*) and (*b*) The report of the University Committee is being printed. It is not possible to express any opinion on the matter at this stage.

## LEGISLATION.

***The Limitation Regulation Amendment Bill.***

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to present the report of the Select Committee on the Limitation Regulation Amendment Bill and move that the same may be taken up for consideration.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I beg to second the motion.

The motion was carried.

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DEPUTY PRESIDENT: There are no amendments to the preamble and Clause 1. I take it that the House agrees to their standing as part of the Bill.

The motion was carried, and the Preamble and Clause 1 were added to the Bill.

***Clauses 2 to 4.***

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In Clause 2, Sub-clause (3), line 2, I move that the word 'paddy' be substituted for "grain". The existing provision in the Bill submitted by the Select Committee is that "a 'bond' includes any instrument whereby a person obliges himself to pay money or *grain* to another on condition that the obligation shall be void if a specified act is performed or is not performed as the case may be." The expression "grain", I would submit, requires modification. The meaning of that expression in legal phraseology is any kind of corn sown in the ground. I am relying on Black's Law Dictionary in support of my submission. Now, "grain" includes, therefore, not only paddy but wheat and all manner of other cereals. I doubt the wisdom of widening the existing law upon the subject by an amendment of this description.

DEPUTY PRESIDENT: Have you got the word "grain" in the existing Regulation?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No. We have not got it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We have it in some sections.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): On the other hand, if it is the intention of the Law Member to include movables of all kinds under the category of money for the purpose of "bond", why certain movables like elephant, cattle etc., should be excluded and why only grain of all kinds should be favoured I fail to understand. The existing law upon the subject as laid down by the High Court is contained in two or three rulings. The rulings in 3 Thandu Aiyar Page 119 and 12 T. L. J. 59, lay down the principle that paddy in this country is practically treated as equivalent to money and as such viewed as currency by the agricultural population of the State. Such being the case, my submission is that it need only be confined to paddy. Therefore, I suggest that the expression 'grain' be changed into paddy.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will accept that.

DEPUTY PRESIDENT: I take it that the House agrees to the amendment being accepted.

The amendment was carried.

DEPUTY PRESIDENT: Then there is an amendment in the name of Mr, Ramakrishna Pillai with respect to the same Clause, to delete the words "or grain."

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[Deputy President.]

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): In the definition of the word "bond" I think it is not necessary to include grain also. It must be confined to money, especially in view of the future amendment we have proposed in Article 119.

DEPUTY PRESIDENT: In view of the first amendment being carried, are you in order? I am pointing out the difficulty in view of the Council having agreed to the substitution of the word "paddy" for "grain". The word "paddy" is not in the Bill as settled by the Select Committee.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): My amendment is to delete the expression 'or grain'. I think it is in order. Grain includes paddy.

DEPUTY PRESIDENT: Whether it includes paddy or not, your amendment should be not to delete "or grain" but to delete "or paddy" which has been substituted as a result of Mr. Narayana Pillai's amendment, and it has been accepted by the House.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Then I ask for permission to move that only 'money' be included in the definition of 'bond'.

DEPUTY PRESIDENT: Why do you not move it when we come to the "Articles"?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): My submission is that in some of the articles we must certainly provide for grain also. It is not necessary, as a general rule, to include grain also in the definition of 'bond'. Money is the medium of exchange and there is no use in using the word grain.

DEPUTY PRESIDENT: Would you abolish all transactions in paddy?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Not that I would abolish all transactions in paddy.

DEPUTY PRESIDENT: What would you call those instruments?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): They will be in the nature of agreements or contracts, for breach of which we have provided in the Articles and wherever special provision has to be made we are at liberty to include 'grain'. General provision need only be made in respect of bonds.

DEPUTY PRESIDENT: I will let you move your amendment. But I am afraid it is not in order.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Still at present we are only laying down the definition of the word 'bond'. This word was not in the original Bill under definitions.

DEPUTY PRESIDENT: Unless you want to exclude all transactions in paddy, there is not much virtue in asking for its deletion.

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If your idea is that a different period of limitation ought to be prescribed for money and for paddy, you can move the necessary relevant amendment when we come to deal with the "Articles". Here, you have to recognise the existence of a class of transactions under which, instead of money, paddy is advanced as a loan. I give you permission to move it if you are very particular.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I do not move it, Sir. My position is that money alone is entitled to legal recognition as the medium of exchange.

The following amendment was not accordingly moved.

Sub-clause (3), line 2. Delete the words "or grain".

DEPUTY PRESIDENT: The question is that Clause 2 as amended do form part of the Bill.

The motion was carried and the clause as amended was added to the Bill.

DEPUTY PRESIDENT: The question is that Clauses 3 and 4 do form part of the Bill.

The motion was carried and the clauses were added to the Bill.

*Clause 5.*

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I move that the words "or rule" be inserted between "enactment" and 'for' in line 3. The Civil Procedure Code contains sections as well as rules. So it will be better to insert this expression. That is the case in the British Indian Act also. I think there will be no objection to accept this amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second the motion.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will accept it.

DEPUTY PRESIDENT: I take it that the House accepts the amendment.

The amendment was carried.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have also another amendment. It is with reference to *Explanation* II.

DEPUTY PRESIDENT: I don't regard it as an amendment. I will let you suggest the necessary modification in the clause as settled by the Select Committee.

The following amendment was not moved.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*):

*Explanation II.* Substitute the following "Delay caused by counsel's erroneous advice which the appellant or applicant *bona fide* accepted and acted on is sufficient cause within the meaning of the Section."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I move that in *Explanation* II, line 3, the words "engaged to present the appeal or application" be inserted after the word "Vakil". The present Explanation reads as follows:—

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[Mr. P. K. Narayana Pillai.]

"*Explanation* II. The fact that the appellant or applicant omitted to prefer an appeal or make an application within the period prescribed therefor acting in good faith on the advice of a Vakil may be sufficient cause within the meaning of this Section".

I certainly sympathise with the Select Committee in their views that a provision of the description indicated in *Explanation* II has become necessary. That has been necessitated by a ruling of the High Court now reported in 13 T. L. J. 354. It is a Full Bench ruling, and it goes considerably against mistakes of all kinds especially when they are committed by legal practitioners. It is a misfortune that the attention of the Full Bench was not drawn to a prior ruling of the High Court on the subject. For I may refer to two rulings in this connection, one reported in Kolappa Pillai's "Unreported Decisions", at page 33 to which Sadasiva Aiyar C. J. was a party and which holds that an honest mistake of law is excusable under the existing provision of law, that is, Section 5 of the Limitation Regulation. The Full Bench ruling that I referred to seems to lean more or less in favour of certain English rulings upon a parallel provision under the English Statute. For example, the ruling in I King's Bench Division, 1907, page 1, is referred to as guiding the principle in the Full Bench ruling. But it is again unfortunate that this identical English ruling has been departed from in this High Court itself by Sadasiva Aiyar C. J. in the decision reported in Kolappa Pillai's Decisions page 359.

DEPUTY PRESIDENT: Which is earlier?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The Full Bench ruling is a very recent ruling. The other is a very old ruling. That is to say, the practice of the legal practitioners and the Courts has been in keeping with such precedent under the belief that such mistakes would be excusable at the hands of the learned Judges. But since we are now confronted with the ruling of the Full Bench of the High Court of Travancore, as I said before, the somewhat novel practice of the legislature interfering and laying down the law has become necessary. So, I am quite at one with Mr. Subba Aiyar in adding the *Explanation* to the Section, but in the *Explanation* some vagueness is likely to arise from the language used. My friend simply says "acting in good faith on the advice of a Vakil may be sufficient cause within the meaning of the section." Any Vakil may be tempted to offer advice if he has got leisure and may not care what the advice is going to lead to. The Section speaks only of *any Vakil*. Even a Criminal Vakil is sufficient for the purpose of the Section. Granting for argument's sake that a Munsiff's Court Vakil is competent to advise a client with respect to an appeal to be preferred to the High Court when his practice is not on the appellate side, it is extremely questionable whether his advice should stand the party in good stead. So, my object, first of all, is to see that an appropriate Vakil should be contemplated under the *Explanation*. Even a very proper Vakil may not care very much to see what the particular period of limitation is, if he is not approached professionally; so I provide for it.

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DEPUTY PRESIDENT: You mean with a fee also, I suppose.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is the meaning of it. "Professionally" implies the appropriate fee which the litigant public should provide to engage a Vakil; so I say Vakil engaged by the parties must be the Vakil who misleads by his advice for the purpose of this section and unless there is some engagement, be it only for the purpose of advice or for presenting the appeal for application the mistake should not be condoned.

DEPUTY PRESIDENT: You say the engagement need not necessarily be by the execution of *vakalatnama*?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No; not necessarily.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Suppose, in the case of an appeal to be filed in the High Court, the party files it in the District Court on the wrong advice of a Vakil of the District Court, that as a consequence it is out of date when it is brought to the High Court and that the party pleads the excuse that his Vakil advised him wrongly; in such a case, if we accept his amendment, would not this plea of wrong advice be open to the objection that the Vakil who advised wrongly was engaged only for the District Court and not for the High Court?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Any way he has been engaged there.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): According to the wording of the Bill, the Vakil who advises wrongly should be engaged for the purpose of presentation of appeal or application. In my illustration there is no engagement for either of these. Therefore, if the amendment is accepted, it will certainly bar the party in my illustration from raising the plea of wrong advice.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He has once been engaged in the matter of presenting the appeal before a Court of Law. I am prepared to accept any modification in the wording of my amendment.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am not able to see the real objection for the provision being a little elastic. I will ask my friend Mr. P. K. Narayana Pillai a question. Supposing a person who has got a Munsiff's Court decree comes here for filing an appeal and consults a High Court Vakil who advises him that the appeal lies before the District Court, and that the party files the appeal in the District Court as a result of such advice. The Vakil here may not have been engaged. I dare-say my friend Mr. P. K. Narayana Pillai will not say that the Trivandrum Vakil did not give proper advice and that his advice should not be acted upon in preference to the advice of the District Court Vakil. If



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[ Mr. G. Parameswaran Pillai.]

we accept the amendment, such a party, who acts upon the advice of the Vakil here, although he has not been engaged, would not be entitled to relief under the present provision.

DEPUTY PRESIDENT: Would not the contingency contemplated by Mr. G. Parameswaran Pillai be covered by Clause 14?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No; because, it has been recently interpreted by the High Court the other way. A Full Bench of the High Court refused to accept the elastic and liberal interpretation of the Clause. It is to over-rule that decision that the present provision is intended. I think it is better to leave it as it is instead of restricting it to any particular class of Vakils. After all, it is only a provision for allowing extension of time for preferring appeals in cases where the delay is caused by the wrong advice of Vakils. Whether such Vakils practise in the High Court or in the District Court or in the Munsiff's Court, it does not materially affect the principles. Therefore, I think it is not desirable to restrict the provision still further. It is better to leave it as it is.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I oppose the amendment. We are trying practically to override the decision of a Full Bench of the High Court on questions relating to matters of fact.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The amendment does not relate to that. The Select Committee has already overridden the High Court ruling.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am utilising my objections to the explanation as an argument against the amendment. As I proceed, I will make myself clear.

DEPUTY PRESIDENT: Mr. P. K. Narayana Pillai is suggesting certain alterations to Explanation II as settled by the Select Committee. Whether those verbal alterations are justifiable or not is the only question now.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am mainly concerned with Mr. Narayana Pillai's amendment. But, I should not be prevented from referring to other principles and other sections in order to make my reasoning against the amendment clear. The principle, that the legislature should step in to correct mistakes of this nature, is not a healthy principle. Our courts are empowered to decide whether a party is entitled to extension of time or whether the Limitation Regulation should be strictly applied against him. I do not see the reason why, in the case of Vakils' mistakes alone, the discretion of the courts should be taken away by the legislature.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether this is a question of fact or of law?

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MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): It is a question of fact.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Is he aware that the rulings of the courts are just to the contrary?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am not concluded by any ruling. I am talking as a member of the legislature and as such I cannot be bound by the decisions of courts. (*Laughter.*) I am not speaking as a lawyer. The two functions are entirely different. If my friend opposes me with rulings of courts when I am arguing a case as a Vakil in a court of law, then, certainly, I am bound by those rulings.

What I am now putting to the House is that, in deciding whether a party should be given extension of time or not, the courts will have to consider the several circumstances of each case. The mere chance that, in a particular case, the error proceeds from the Vakil should not entitle the party to get any more advantage than other people whose Vakils fail to plead *res judicata* or misjoinder of parties. In all these cases, the Vakil is equally responsible for the errors.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out to my friend that there is something like review in such cases, on the ground that such questions of law have not been argued?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Why *something like review*? I am also practising as a lawyer like my friend Mr. Parameswaran Pillai. I know there is review.

Now, Sir, let us take the case of a Vakil who does not keep himself in touch with all principles of law or study the latest decisions or who is oblivious to some of the sections of the Civil Procedure Code or the Limitation Regulation. If such a Vakil fails to say that the suit is barred on account of *res judicata*, the court, certainly, gives decree in favour of the plaintiff. I will quote another instance. Suppose there is a person who has a very honest case, but who has not got money to finance the litigation. He is not given any benefit, even by way of extension of time until he is able to procure money. But the man who goes to a wrong Vakil, who does not keep himself in touch with principles of law or who does not advert to the consequences of his actions is sought to be protected by this Explanation. Why should the man who goes to the wrong Vakil or who is careless or ignorant be alone entitled to any consideration?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know the distinction between right Vakil and wrong Vakil?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I never used the expression, '*right vakil*'. I spoke only of '*wrong Vakils*'. Anyhow, for the sake of my friend Mr. Ramakrishna Pillai, I say '*right Vakil*' is one who is able to give good advice and the '*wrong Vakil*' is one who is not able to do so.

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[Mr. T. K. Velu Pillai.]

DEPUTY PRESIDENT: The right Vakil is one whose view is ultimately accepted by the court. Is it not so, Mr. Velu Pillai?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): It is a very difficult question; because, sometimes the court itself may go wrong, nobody is infallible. There is a human element in all these things.

I do not see, Sir, the reason why the Vakil alone should be placed on such a pedestal so that his mistakes alone should be excused. When a Full Bench of the Travancore High Court have ruled that parties should not be given extension of time simply because the delay was due to the mistake of the Vakil and when that ruling is perfectly consistent with English decisions, I am sorry, Sir, I am not able to persuade myself that the course that we now adopt to override the rulings of the High Court is the right course.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask Mr. Velu Pillai whether he is aware that the Travancore High Court ruling is not in conformity with the rulings of Indian High Courts?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I know, Sir, there are some Allahabad and Bombay cases to the contrary.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Not only Bombay and Allahabad; all the Indian High Courts have ruled contrary to the ruling of our High Court.

DEPUTY PRESIDENT: There is no amendment for the deletion of the explanation.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have already explained myself. I am opposing the amendment for a right purpose and on proper grounds.

DEPUTY PRESIDENT: You cannot attack the explanation as a whole.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If my friend Mr. K. Parameswaran Pillai reads the Indian decisions, particularly the Full Bench decision reported in 12 Allahabad, it will be seen that their Honors observe that the condition of the people in India is not as satisfactory, in point of education and otherwise, as in England.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Are the conditions different in Travancore?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): They are different, because the people in Travancore are very much more advanced in literacy and in all matters than the people in British India.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Are the people in Travancore superior to those in England?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): That question does not arise.

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The British Indian High Courts, no doubt, have taken the view that extension of time should be given on the ground of Vakil's mistake. That is because British India is an extensive area and education is not so widespread as in Travancore. In Travancore where every man is his own lawyer. People are well-versed even with case law. It is not likely here that people would commit mistakes or would employ a Vakil who is liable to err in matters of law. After all, we have got a small extent of territory and it is not likely that people commit mistakes in litigation, especially in the choice of Vakils.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is my friend aware that in the case reported in 13 T. L. J. the mistake was committed by a leader of the Trivandrum bar?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I do not want to drag names of persons here. Because it has been decided in British India in a particular way or because the leader of the bar here has committed a mistake, I do not see the reason why we should also adopt the British Indian view. I think it would be better if we agree with the people of England in these matters, because most of us are enlightened and mistakes are not likely to be committed, especially in the matter of selecting Vakils. I do not see any reason why the party who goes to a wrong Vakil should be shown greater consideration than a man who is poverty-stricken or who is not able to get money for litigation or who is prevented by illness.

DEPUTY PRESIDENT: All that is excused even at present.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have no objection to the court exercising its discretion in the matter. The only question is why the Vakil's mistake alone should be excused by the legislature. If the Full Bench decision is not equitable, there are Vakils who are able to reverse such decisions, and, certainly, it can be reversed when a similar case comes up later.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is my friend aware that the matter came up again before the High Court and that the Full Bench decision was affirmed?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): The decision may be affirmed thirty times and still it may be revised. Therefore, when the High Court has given a decision in the matter which is consistent with principles of justice and which is consistent with the principle that a party should not by unduly helped simply because he has been misled by a Vakil, I do not think it is justifiable on the part of the legislature to interfere in the matter and override the decision of the High Court.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Is not the Vakil's mistake a vicarious mistake?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): But there are other such mistakes which are not protected.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know how many appeals have been dismissed on this ground?

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[Mr. P. K. VELU PILLAI (*Trivandrum cum Nedumangad*):

MR. P. K. VELU PILLAI (*Trivandrum cum Nedumangad*): It does not concern me. I did not collect statistics.

DEPUTY PRESIDENT: Mr. Velu Pillai, please direct special attention to the merits of the amendment instead of discussing the general principle of the Explanation.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I have been trying to show that the explanation is misconceived. It will be a precedent for other prejudicial changes in the law. Although Mr. Narayana Pillai's proposition is based on a better footing than the Explanation, I am not satisfied with that either. Because I have got an opportunity of expressing my opinion on the amendment, I suggest, by a side-wind as it were, that the Explanation is bad. My reasons for opposing Mr. Narayana Pillai's amendment, since it is better than the Explanation, apply with greater force against the Explanation. Anyhow, I maintain that the Explanation and the amendment are equally unnecessary. Therefore, I oppose the amendment.

MR. JOSEPH PANJIKARAN (*Shertallai*): I also oppose the amendment, not for Mr. Velu Pillai's reasons but because the amendment, as proposed by Mr. Narayana Pillai, will bring the operation of the rule to a narrower limit, whereas, if it is left as settled by the Select Committee, it will have a wider range. On that ground, I oppose the amendment proposed by my friend Mr. Narayana Pillai. I will cite an instance. A Vakil in the Munsiff's Court advises a party to take a case to the High Court. The party himself prepares the appeal memorandum and puts it in. The advice of the Munsiff's Court Vakil in this instance may be wrong. Now if this exemption is restricted to the counsel engaged in the High Court, such a party would not be entitled to the relief, because there was no counsel engaged for the High Court at all. Such cases have to be taken into consideration. Considering all these circumstances, I think the wider range, as afforded by the provision as settled by the Select Committee, would be better than the amendment proposed by my friend Mr. Narayana Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to the general attack on the explanation, I do not wish to speak anything. With respect to my friend, Mr. Panjikaran's observations, and those of Mr. Subba Aiyar, as I have already submitted, we should not throw open a very wide door for exemption from the operation of the limitation bar. It appears to me, Sir, that a person who is a mere Munsiff's Court Vakil cannot be expected to be consulted, in the matter of preferring an appeal either to the District Court or the High Court. So, a party who begins to consult a Munsiffs' Court Vakil on a subject with which he is not expected to be acquainted must pay the penalty of such wrong procedure.

DEPUTY PRESIDENT: Suppose you put in the words "a duly qualified vakil."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The expression "practising in a court of appeal" is also necessary.

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DEPUTY PRESIDENT: That is not necessary. ...are practising in Munsiff's Courts. Suppose you put in those of us duly qualified vakil," would that not meet your requirements? ...rds "a

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, it will be more or less appropriate.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Only a duly qualified licensed vakil is called a vakil.

MR. JOSEPH PANJIKARAN (*Shertallai*): Not so. Is not a criminal court vakil also called a vakil?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Only civil court vakils are called duly qualified vakils.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether a criminal court vakil is not a duly qualified vakil?

DEPUTY PRESIDENT: Not from the facts and circumstances of a particular case. He may be duly qualified to advise clients with reference to suits pending in Munsiff's Courts, but he may not be duly qualified to advise parties with reference to appeals to be presented before the High Court.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My own view is, Sir, to avoid the difficulty suggested by my friend Mr. Panjikaran, a vakil practising in a court of appeal will be enough. That will cover District Court Vakils and High Court Vakils and they are the only persons as regards appeals competent to advise parties.

DEPUTY PRESIDENT: There is the question of application too.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): May I know whether it would cover a District Court Vakil practising before a Munsiff's Court?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No. There is the question of application also coming in. That aspect of the question did not strike me. I do not press my amendment.

The amendment was by leave withdrawn.

DEPUTY PRESIDENT: The question is that Clause 5 as amended by the Council form part of the Bill.

The motion was carried and Clause 5 as amended was added to the Bill.

***Clauses 6 to 10.***

DEPUTY PRESIDENT: There are no amendments tabled as regards Clauses 6, 7, 8, 9 and 10. The question is that these Clauses form part of the Bill.

The motion was carried and Clauses 6, 7, 8, 9 and 10 were added to the Bill.

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***Clause 11.***

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : I move:—

*In sub-clause (1) line 1, the word "contracts" be substituted for "contract" and the word "in" inserted between "into" and "a."* That is only a verbal amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I accept it, Sir.

The amendment was accepted by the House.

DEPUTY PRESIDENT : The question is that Clause 11 as amended by the Council form part of the Bill.

The motion was carried and Clause 11 as amended was added to the Bill.

***Clauses 12 and 13.***

DEPUTY PRESIDENT : The question is that Clauses 12 and 13 form part of the Bill.

The motion was carried and Clauses 12 and 13 were added to the Bill.

***Clause 14.***

The following amendments were not moved :

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) :

Sub-clause (1), line 3. Insert between the words "of" and "appeal", towards the end of the line, the words "first or second."

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) :

Add the following as Explanation V:

"Explanation V. The words 'whether in a court of first instance or in a court of first or second appeal' shall include any foreign court where the former suit or application was dismissed for want of jurisdiction only."

DEPUTY PRESIDENT : The question is that Clause 14 form part of the Bill.

The motion was carried and Clause 14 was added to the Bill.

***Clauses 15 to 20.***

DEPUTY PRESIDENT : There are no amendments tabled for clauses 15, 16, 17, 18, 19 and 20. The question is that Clauses 15 to 20 form part of the Bill.

The motion was carried and Clauses 15 to 20 were added to the Bill.

***Clause 21.***

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : I move:—

*In sub-clause (1), line 3, the word "his" be substituted for "an."* That is only a verbal amendment.

MR. C. SANKARA MENON (*Quilon*) : I second it.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Va...*): as it is, there is no mistake. But I have no objection to accept. Even

MR. P. K. NARAYANA PILLAI (*Ambalapuza*): Under Section, when you refer to an agent as his agent, naturally we think human beings alone as meant by the word "persons." But persons would include a corporate body also like companies. So I would have the word "an" as it is. Hence I oppose the amendment.

DEPUTY PRESIDENT: Do you press it in view of Mr. Narayana Pillai's observations?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I do not press it.

DEPUTY PRESIDENT: The question is that Clause 21 form part of the Bill.

The motion was carried and Clause 21 was added to the Bill.

***Clause 22.***

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I move for the deletion of the exception. The exception is—

"Any written acknowledgment signed or payment made by the manager of a joint Hindu family or by the Karanavan of a Malabar tarwad shall bind his coparceners or anandaravārs, as the case may be notwithstanding that such coparceners or anandaravars were parties to the contract or co-executants of the mortgage."

The exception gives too much power to the manager or karanavan and indirectly defeats the object of protecting the anandaravars or coparceners. By deleting the exception, no hardship is likely to ensue to the creditors since they will have taken care to have the anandaravars or junior members joined, as the case may be.

DEPUTY PRESIDENT: You want to provide for the acknowledgment and the extension of the period.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): The Section says that in the case of acknowledgment it is not necessary that the anandaravars or junior members need be joined. I say that they should also be joined. Otherwise, it will defeat the purpose of these people participating in the original document.

DEPUTY PRESIDENT: What about the manager of a Hindu Mitakshara family?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Even in that case, there is no reason why they should not also join.

DEPUTY PRESIDENT: Do I understand you to suggest that such coparceners or anandaravars should be parties to the acknowledgment in all cases?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): That is exactly what I say.

DEPUTY PRESIDENT: Suppose they were not parties to the original transaction.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): If the creditor takes care to have them as parties to the original transaction, he should see that they should join the acknowledgment also.

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DEPUTY PRESIDENT: I am asking you whether, in case they were not parties to the original transaction, namely an acknowledgment by the manager or the karanavan, you object to the acknowledgment as such being enforceable against the manager or karanavan.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Not so.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to second the amendment. The exception, as it stands, creates a real difficulty. Suppose in a marumakkathayam family three persons have executed a hypothecation bond. Just before the period of limitation, if the karanavan makes an acknowledgment of that debt, this exception would keep the debt not only alive as against the tarwad and the karanavan but also as against the junior members. Now, the liability of a junior member when he executes a hypothecation deed in conjunction with a karanavan is not only for the purpose of binding the tarwad, but also to create a personal liability against the junior member. If this provision is accepted, it will come to this. Even the personal liability as against the junior member can be extended by the action of the karanavan. It will be fundamentally opposed to all principles of acknowledgment and prolongation of the period of limitation. In that view, I am sorry to oppose the exception.

DEPUTY PRESIDENT: The liability of the coparceners or anandaravars is expressly excluded.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): As it stands that is not the case. Therefore, I am prepared to support Mr. Ramakrishna Pillai's amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. In the first place, the exception in Clause 22 is not a new provision at all. It is found in the existing Regulation of 1062 and therefore has been in existence for nearly forty years.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is identical?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We have to substitute "anandaravars" for "seshakars".

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I point out to Mr. Subba Aiyar that the exception is not identical with the provision in the existing Regulation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any difference at all.

DEPUTY PRESIDENT: Mr. Narayana Pillai, may I invite your attention to sub-clause (2) of Clause 22 which reads—

"Nothing in the said Sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them."

Is not the difficulty that you are apprehending amply protected?

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the Mitakshara family or the Hindu coparcenary, unfortunate case of junior members would be bound. That is the meaning of the exce the

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The explanation is different.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may say that I have no objection to have the explanation put in the place of exception. I thought that the explanation does not read quite as a provision in an enactment. I have no objection to leave it as it stands. But it was thought that the very same thing is proposed to be embodied by the exception, and there is absolutely no difference in principle. The language was not very happy, and, therefore, it is intended to modify it. For instance, under the Nayar Regulation we know that the karanavan cannot execute a bond binding upon the tarwad property except in conjunction with the anandaravars of the tarwad. Therefore, it is only for that purpose that their consent was necessary for an acknowledgment. If the karanavan acknowledges, the tarwad will be bound, but I do not think that it will in the least give a personal liability as well or a right to proceed against the person or persons concerned.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Is it not open to the creditor to proceed against the junior members?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Not personally. He can proceed against the karanavan and the tarwad. Even if the right of each of the persons is distinct, that right also will not be affected. So, it is only in the case of a manager of a tarwad who has got the right to represent the tarwad and who has got the power to acknowledge a debt that this provision has been enacted, in order to make it plain. In other words, the Nayar Regulation does not militate against that provision and does not say that the karanavan has no power to bind the tarwad by an acknowledgment. That is the existing provision as enunciated by the courts and that has not in any way been restricted by the provisions in the Nayar Regulation. Therefore, I say that, consistent with it, the karanavan has got the power to acknowledge and revive the debt. So also, the manager of a Hindu Mitakshara family. But so far as each individual right is concerned, namely the separate right, it will not be revived by the acknowledgment of one person. That is found in Section 22 itself. So far as the nature of the tarwad is concerned, the karanavan of a Malabar tarwad or the head of a Mitakshara family has got a right to bind the tarwad by certain acts.

DEPUTY PRESIDENT: What is the extent of the binding nature? It is said in the exception that it "shall bind his coparceners or anandaravars, as the case may be, notwithstanding that such coparceners or anandaravars were parties to the contract or co-executors of the mortgage."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It means only to that extent. If there is any doubt and it is supposed that

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by substituting it we are likely to be misunderstood, I have no objection to have the exception as explanation.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Does the exception find a place in the British Indian Act?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will be quite satisfied with the explanation in the existing Regulation.

DEPUTY PRESIDENT: That is to say, you want to put in the word "Explanation" instead of "Exception."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of course, in the Explanation we will have to put in "anandaravars" instead of "seshakars."

DEPUTY PRESIDENT: The question that Mr. Subba Aiyar raised was that the "exception" should be changed into "explanation". Does it meet your requirements, Mr. Ramakrishna Pillai? I think you ought to agree as to the deletion of the exception. Supposing this exception is deleted, are you agreeable to the existing explanation being embodied in this section as an explanation with this verbal alteration of seshakars into anandaravars?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Yes. I agree.

The exception was deleted by permission of the House.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to move that the present Explanation be put in as Explanation to Clause 22 with the amendment that 'seshakars' be substituted by 'anandaravars'.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second it.

DEPUTY PRESIDENT: Will you please read the existing explanation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It runs as follows:

"Nothing in this Section shall be construed as taking away the powers conferred upon the manager of an undivided Hindu family or the karanavan of a Malabar tarwad, simply because he happens to execute the original contract jointly with his coparceners or seshakars, (or as applying to the interest or liability of the person who is a party to the written acknowledgment or payment, where such interest or liability is distinct from that of his joint contractors, partners, executors, or mortgagees)."

DEPUTY PRESIDENT: I take it that the House accepts the amendment.

The amendment was accepted.

The question that Clause 22 as amended do form part of the Bill was put and carried.

The clause as amended was added to the Bill.

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*Clauses 23 to 26.*

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move the following amendment:—

*"In line 2 of Clause 23, insert after the word 'suit' the words so long as the cause of action remains the same."*

I may first of all point out the wide difference that subsists between the present Clause 23 on the one hand and the parallel provision in the British Indian Limitation Act on the other. The British Indian Act is to the effect that limitation shall be deemed to have accrued in favour of the defendant before he is added as a party. That is the provision in the British Indian Limitation Act. But in Travancore the period of limitation is against an added defendant and he will be considered to be a defendant from the starting point of the suit. The attempt of Mr. Subba Aiyar not only with regard to the Limitation Regulation but also with regard to the Civil Procedure Code in Travancore has been to approximate more and more to the British Indian changes. Therefore first of all, our attempt ought to be to adopt the provisions of the British Indian Limitation Act as far as possible. But such change when introduced would probably be too sudden a change from the existing provision of the law. In view of that fact, I am suggesting a medium course here. If by an order of the court, subsequently a new defendant is brought upon the record at a time when the cause of action is absolutely dead, and if he should be treated as a party as at the time the suit was instituted, it is a real hardship so far as that particular defendant is concerned. In such cases the British Indian Act wisely provides that the plaintiff has to suffer for any omission on his part. Here, in Travancore, we have got peculiar ways of doing things. A suit may be based upon one cause of action and may be amended to include other causes of action. Even in such circumstances, no limitation can be pleaded. Therefore my submission is this. The power conferred under Section 23 to suspend the period of limitation as against the defendant till he is brought upon record from the starting point of his suit—that can be conferred only so long as the original cause of action remains the same. If by any amendment of the plaint, another cause of action is added and a new defendant is brought upon record, then the defendant must be enabled to plead the law of limitation as regards him. It is with that view I propose this amendment. This course is adopted by all Courts in British India. 36 Allahabad, 123 is a ruling on the point. In Travancore also, their Honours are of opinion that amendment of the cause of action after the period of limitation is generally prohibited. We have got a ruling in 11 T. L. J. 381 in support of my view. On account of the occasional jugglery of parties, the courts, without paying much heed, allow additional causes of action to be tacked on. In such circumstances the defendant should not be gagged from pleading the law of limitation. So long as the cause of action remains the same, you may add any considerable number of defendants. It is with this object that I have brought in this amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I second it.

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[MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, m there is vital difference between the British Indian Act and the Travancore Regulation. It was thought undesirable to go in for a radical change. The effect of the amendment is that, when a party is newly added, so far as he is concerned, the suit should be considered to have begun from the date on which he was brought on record." So far as the present amendment is concerned, I would accept it in this way "provided that the cause of action remains the same. I believe there is an earlier ruling of Justice Raman Menon. So, we may put it as "provided the cause of action remains the same."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I accept the amendment. It is only a verbal change. I leave it to Mr. Subba Aiyar to put it in legislative language.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): "Provided the cause of action remains the same." That is the amendment.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I second it.

The amendment was put to the vote and carried.

DEPUTY PRESIDENT: The question is that Clause 23 as amended, do form part of the Bill.

The motion was carried and the Clause, as amended, was added to the Bill.

The question that Clauses 24, 25 and 26 form part of the Bill was put to vote and carried and the Clauses were added to the Bill.

***Clause 27.***

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I beg to move my amendment which runs as follows:—

Insert the words "first Chingom" between the words "from" and "1076" and between "to" and "1096" in line 4 of Illustration (*a*).

The amendment is only verbal.

MR. C. SANKARA MENON (*Quilon*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I doubt whether there is any desirability or necessity for this amendment. If one had been enjoying the right for 20 years and if the suit is filed only in 1097, then it is barred by limitation. So I do not think there is any necessity to clear any doubt and provide for clear 20 years. Difficulties may arise if it is stated 1st Chingom 1076 to the last day of 1096. What the Illustration says is that the suit will not be barred by limitation if it is filed within 1096. So, I do not think that there is any necessity for any change.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I withdraw my amendment.

The amendment was, by leave, withdrawn.

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The question that Clause 27 form part of the Bill was put to vote and carried and Clause 27 was added to the Bill.

***Clauses 28 and 29.***

The question that Clauses 28 and 29 form part of the Bill was put to vote and carried and Clauses 28 and 29 were added to the Bill.

***Clause 30.***

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): Sir, before we go to the next amendment, I move that 'section' be inserted between the words 'and' and '23' in Clause 30 (2) (*a*).

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I second it.

The amendment was accepted by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I propose to delete the word 'only' in line 1 in sub-clause (2) (*a*) of Clause 30.

It seems to me quite superfluous in so far as the language is concerned. So, I think it may be omitted.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I second the amendment. I have also sent in a like amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe two or three words were also omitted. It was "only in so far as and to the extent to which they are not expressly excluded by any special or local law." That Section has been taken from the recent amending act in British India where the question was whether in the case of special or local law a suit is to be dismissed where the limitation is not pleaded either in the original or appellate court. There also the question was whether provisions of Sections 4, 10 to 18 and 23 would apply. There are conflicting rulings and it was considered necessary to make the provisions applicable "except in so far as they are made inapplicable."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it not an addition to the clause? It is scrupulously worded and is specific.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will explain. What it says is that Clauses 4, 10 to 18 and 23 may be made inapplicable in the special or local law itself. In that case, to the extent to which it is abrogated, Clauses 4, 10 to 18 and 23 will not apply. It refers only to the application of sub-clauses (*a*) and (*b*). It shall apply only to the extent and in so far as they are not expressly excluded. "The provisions contained in Sections 4, 10 to 18 and 23 shall apply only in so far as and to the extent to which they are not expressly excluded by any special or local law." That is the meaning of it. It is, I think, quite correct. In other words, the provisions excluding the period of time for obtaining copies or other provisions with respect to jurisdiction, *viz.*, the party was pursuing a remedy in a wrong court, all these may be made inapplicable. The provisions in Clauses 4, 10 and 18

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[Mr. S. Parameswara Aiyar.]

will apply except to the extent to which they have been restricted by the new law. Therefore, I think the word 'only' will be absolutely necessary.

DEPUTY PRESIDENT: Suppose we add the words "to the extent," will you withdraw your amendment, Mr. P. K. Narayana Pillai?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am sorry I view it from a different standpoint. Only in so far as and to the extent to which it is expressly prohibited by the local law; and not in the absence of any local law, it will not apply. Therefore, I think that my amendment is in proper form. Sir, my idea in pressing for the deletion of the word is this. The provisions of Sections 4 etc., mentioned in sub-clause (*a*) of the general limitation law, must apply to a special or local law except where such application is expressly prohibited. That is my object. For that purpose, I submit that the deletion of the word "only" is necessary. So far as the other provisions of the general limitation law go, we are not concerned with them. Their application has been expressly excluded by Mr. Subba Aiyar in Clause 3. So that the provisions of Sections 4, 10 to 18 and 23 shall apply in so far as they are not expressly excluded by special or local law for the purpose of determining any period of limitation prescribed for any suit or appeal or application. I do not, therefore, see the reason why 'only' should be retained. I do not quite see the point especially when he says that he omitted the further words also. I think we may safely omit the word 'only' also.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as any particular portion of this Regulation may apply, there is no difference between Mr. Narayana Pillai and myself. The difference between him and myself is that I added "only" in order to specify the extent to which the provisions will be inapplicable. So I would add "only in so far as and to the extent to which it is made inapplicable."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If that is also added, I withdraw my amendment.

The amendment was, by leave, withdrawn.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I move the following amendment to Clause 30, sub-clause 2 (*a*), *viz.*, to insert after the words "in so far as" the words "and to the extent to which."

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second the amendment.

The amendment was carried.

The question that Clause 30 as amended do form part of the Bill was then put and carried.

The Clause was added to the Bill.

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*Clause 31.*

MR. P. K. NARAYANA PILLAI (*Ambálapuzha*): Sir, with respect to Clause 31, the following amendment may be substituted in place of the existing Clause. The present Clause reads as follows:

"Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Regulation is shorter than the period of limitation prescribed by the Travancore Limitation Regulation of 1062 may be instituted within the period of two years next after the passing of this Regulation, or within the period prescribed for such suit by the Travancore Limitation Regulation of 1062."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may say that there is a verbal mistake; "whichever period that expired first is shorter" is omitted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is therefore that I submit the amendment. The following be substituted for Clause 31:

"*Nothing contained in this Regulation shall affect the period of limitation prescribed for any suit, appeal or application by the Travancore Limitation Regulation of 1062 if the cause of action of such suit and the right to prefer such appeal or make such application have arisen before this Regulation becomes law.*"

If Mr. Subba Aiyar says that "whichever period that expires first is shorter" should also be added, then I have some quarrel. But if it is for the purpose of extending that period by granting two more years,—

DEPUTY PRESIDENT: He contemplates a case where the period of limitation prescribed is shorter than the period prescribed by the present Limitation Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If, under the existing Regulation, the period is more than two years, why should the party suffer a curtailment of his right by this Regulation? Mr. Subba Aiyar would say that it should necessarily be reduced to the period prescribed under this Bill.

DEPUTY PRESIDENT: Whichever is the longer period.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Then I have no objection. Even then there may be a further objection. I would submit that if, as a matter of fact, a cause of action has arisen before the date of the introduction of this Bill, the existing law of limitation must apply.

DEPUTY PRESIDENT: It will.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is some doubt and that is why I have proposed my amendment. It is practically leaving intact the rights and obligations which arise before the passing of this Regulation. Until the present Bill



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[Mr. V. Subba Aiyar.]

becomes law, the matter must be guided by the existing law. But before that, if limitation has already begun to run in favour of a party, in such a case it is unwise to affect that period of limitation by a subsequent enactment. I know my friend is going to rely upon the parallel provision in the British Indian Limitation Act.

MR V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, it is only with regard to the principle that we rely upon the British Indian Act.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The British Indian Limitation Act has led to a considerable conflict of opinions by the shortening of the period of limitation under the present Act. To save such a contingency in Travancore, I would leave unaffected the rights and obligations which have arisen under the existing law. For that purpose, I would propose the adoption of the Clause which I have read out for the existing Clause.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I object to the amendment. In the first place, the law of limitation is a law of procedure; and therefore whenever a suit is filed or an application is made, the law of limitation for the time being in force will apply.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether it does not also extinguish rights?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that.

That is the ordinary rule. The next rule also says that, if under the existing Regulation any right has become barred or become vested, that vested right cannot be divested or that barred right revised by the new Act. That is to say, you cannot revive a cause of action or kill a cause of action. Therefore, subject to these two principles, the ordinary law of limitation will apply when a suit is filed or an application is made. Judged by that standard, Mr. Narayana Pillai's amendment is absolutely unworkable in practice.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out that his amendment relates to suits and not to applications?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No; Mr. Narayana Pillai's amendment applies to appeals, suits or applications. So far as the amendment is concerned, I will illustrate it by a hypothetical case. Suppose for a suit a cause of action has arisen yesterday or to-day before the Regulation has come into force and the period of limitation has begun to run. According to him a cause of action would not have arisen under the existing Regulation, because he would apply the Regulation that is now in existence. I do not think

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that there is any precedent to support that. The people ought to be given sufficient time only if you are shortening the period of limitation so that they may know how their rights have been curtailed or when the period of limitation has expired. Subject to that safeguard, I say the period of limitation may be guided by the law in force. In the case of an appeal or in the case of an application to implead, I believe a period of three months has been given, and I think Mr. Ramakrishna Pillai wants it to be extended to six months. According to Mr. Narayana Pillai, whether it is a case of decree or suit, when the parties are defeated before the coming of the new Regulation and they appeal after the coming of the new Regulation, they should be allowed a period of limitation according to the existing Regulation. I think that it is rather dangerous and unworkable. The existing provision may be allowed, provided there are sufficient safeguards for existing vested interests and provided there is no time to revive a barred right. These two provisions are supposed to be inherent in every Regulation and I believe that the General Clauses Regulation also refers to it. That is the reason why Clause 34 is put in here. Unless we try to revive a thing, it is actually barred. For these reasons, I oppose the amendment of Mr. Narayana Pillai. I would say at the end of the existing Clause the words "whichever period expires first" may be added because two years will come to six months.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That addition is certainly necessary in the light of the British Indian Act. Further, Mr. Subba Aiyar points out that, after all, it is a question of procedure and that substantially we have it dealt with. I have just forced on Mr. Subba Aiyar some observations that we are against the law of procedure being changed. But since he is making this addition also, I withdraw the amendment.

The amendment was, by leave, withdrawn.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I move that the words "or whichever period expires first" be added at the end of the Clause.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second the amendment.

The amendment was carried.

DEPUTY PRESIDENT: The question is that Clause 31 as amended form part of the Bill.

The motion was carried. Clause 31 was added to the Bill.

***Clauses 32 and 33.***

DEPUTY PRESIDENT: There are no amendments to Clauses 32 and 33. I take it that the House permits these two Clauses to form part of the Bill.

The motion was carried.

The Clauses were added to the Bill.

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[Mr. P. K. Narayana Pillai.]

***Clause 34.***

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I move that the consideration of this Clause be deferred until we take up Article 119. If Article 119 is not going to be passed, then this Section may not be necessary.

DEPUTY PRESIDENT: Yes.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): I have got an amendment to that Clause.

DEPUTY PRESIDENT: Yes. But Mr. Subba Aiyar's suggestion is that the necessity for considering Clause 34 will arise only if the House agrees to allow a period of 12 years for suits on hypothecation bonds for paddy.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): I understand that. But my amendment is not in substitution of Clause 34.

DEPUTY PRESIDENT: I will let you move that at a later stage after we have considered Article 119.

## THE FIRST SCHEDULE.

***Articles 1 to 61.***

DEPUTY PRESIDENT: There are no amendments to Articles 1 to 61. I take it that the House agrees to these Articles forming part of the Bill.

The motion was carried. The Articles were added to the Bill.

***Articles 62 to 97.***

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I move that the words "or more" be inserted after the word "one" in column 1, line 5 of Article 62 and the word "instalments" be substituted for the word "instalment" in the same line. Sir, under the corresponding article in the British Indian Act, we have got the contemplated default provided not only for one instalment but also for a number of instalments. The appropriate changes may therefore be made here also. I think that is the language used in the British Indian Act.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I accept the amendment.

The amendment was accepted by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My next amendment is:—After the word "default" in column 3, line 2, add the words "and on or before the date on which the last instalment is due." It will read thus with the amendment:

"Same as above; but, where, after the default, *and on or before the date on which the last instalment is due*, the payee or obligee makes a demand in writing for the payment of the whole, and has not, thereafter, waived in writing his right to such payment, then from the date of such demand."

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As the article stands at present, if after a date on which the instalments are due, and on a day before the date on which the Limitation Regulation will bar the remedy, a demand is made in writing, three years will be allowed in favour of the man who makes the demand. I do not know whether I have made myself quite clear. The date of such demand may be the date just before which the suit will be barred by limitation. From that particular period Mr. Subba Aiyar says he will be entitled to three years to claim the whole.

DEPUTY PRESIDENT: The contingency you contemplate is that this demand may be made after the expiry of the term fixed for the suit and then it is proposed to give a further extension of three years.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am sure that is not Mr. Subba Aiyar's intention. Hence I would say that the date of demand should be on or before the date fixed for the last instalment. From that he has got three years. If after that he is conceded to have a further period of three years, that will be unduly prolonging the period of payment. It is, therefore, I proposed to add in the 3 rd column, line 2, after the word "default" the words 'and on or before the date on which the last instalment is due." I think I have made myself clear

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): I second the amendment.

The amendment was accepted by the House.

DEPUTY PRESIDENT: The question is that Article 62 as amended form part of the Bill.

As there are no amendments from Article 63 to Article 97, I take it that the House agrees that they form part of the Bill.

The motion was carried and Article 62 as amended and Articles 63 to 97 were added to the Bill.

*Article 98.*

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to add at the end of column (1) "when the suit is by a party to the proceeding."

I beg to submit that the land may be acquired by Government and a person may be absolutely left in the dark when the proceedings are going on before the Acquisition officer. To say that the party will have only 3 years after the determination of the amount of compensation is certainly a hardship. It is therefore that I say that the expression "when the suit is by a party to the proceeding" should be added. If this is done, there is absolutely no objection in fixing 3 years' period. Take the case of a *Jenmi* who is in Malabar—in fact we had an instance of such a case in the Quilon District Court—in which the *Jenmi* never knew that his property was acquired by Government for public purposes, and his tenant received the entire money and walked out. And then when the *Jenmi* proceeded to sue, the District Court, Quilon, refused to entertain

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[Mr. V. Subba Aiyar.]

the suit on the ground of limitation. So, such a contingency arises in the cases where one is not made a party to the proceeding. In the case of trespass upon a property, the ordinary subject has got 12 years to evict a stranger from his property; why not, I ask, a like period b - vided against Government, when they are in no better position than trespassers?

DEPUTY PRESIDENT: It is not a matter of eviction.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the present case there is a difficulty. It is only a question of getting something by way of money. So I am restricting the particular limitation article to parties between whom the proceedings are contemplated under this Regulation.

DEPUTY PRESIDENT: What is the period of limitation in other cases where he is no party?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): When it is an interest in immovable property, the period generally runs to 12 years. In the case of vendor's lien, our High Court have been interpreting the law differently, occasionally 3 years and occasionally 12 years. Justice Sadasiva Aiyar said that it is 12 years, again their Honors in a Division Bench ruling observed that it is 3 years. Then again they have gone back to 12 years with respect to vendor's case. In view of meeting such difficulties and contingencies, I would desire to add 'when the suit is by a party to the proceeding.'

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Will not a notice be published in the Government Gazette?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I believe all people are not getting down the Gazette and I believe they are not bound to take notice of the several items of information that appear in the Gazette. I am quite sure all of us get Gazette *gratis* by the generosity of the Government, being members of the Legislative Council. Still many of us do not know the variety of subjects that appear in the Gazette.

DEPUTY PRESIDENT: As a matter of fact, many of them do not at all use the Gazette.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If in a corner of the Gazette a publication is made, most of the people may not know it. All the same, that is not what is expected of them. So I am suggesting this amendment.

MR. JOSEPH PANJIKARAN (*Shertallai*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I object to the amendment. When land is acquired by Government under the provisions of the Land Acquisition Regulation, property ceases to be the original owner's property and the right and title to it vests in the Government. So that the only thing that the original

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owner will be entitled to will be a compensation or value of the property taken or sold. That being the case, every suit for compensation, every suit for value of the land will have to be regulated by the ordinary provision as to a suit for money which is limited to 3 years; in any case, unless the question relates to money due under registered instrument.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Is not money compensation deposited in Court in the name of the owner?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Supposing that it is not deposited, supposing that there is no reference to the District Court and the Peishkar has the deposit money, a suit may lie. There is no specific provision as to when the suit should be brought. In such cases I say that he is just in the same position as anybody else who has taken a moveable property or some money. My friend instanced a case of a Jenmi in Malabar. For that matter if a person is ordinarily kept out of rights, there are specific provisions in the Limitation Regulation which we have already passed which will enable him to take action if the party be out of India. In such cases nobody need be afraid.

MR P. K. NARAYANA PILLAI (*Ambalapuzha*): If he is out of India, it is all right.

MR. JOSEPH PANJIKARAN (*Shertallai*): If he is unaware of the proceedings, can he not be said to be fraudulently kept out?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think that the fact that the lessor resides outside Travancore makes any difference.

MR. JOSEPH PANJIKARAN (*Shertallai*): Can he get exemption if he is fraudulently kept out?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As for that matter, if a man is in British India and if some body trespasses upon his property, even 12 years may not be enough. There must be a longer period of limitation. Ordinarily the property which after due advertisement and under the provisions of the Regulation has been acquired ought to be under the custody of an agent, and I believe every owner will have his local agent if the owner of the property happened to be outside the jurisdiction, that is, if his property is somewhere in Trivandrum and he is living in Madura or Trichy. Therefore I do not see why there should be a specific provision like the one suggested by my friend. Supposing I accept my friend's amendment, what is the period that he will be entitled to. He will be entitled to only three years.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Under a Calcutta ruling, it is 6 years.

DEPUTY PRESIDENT: Under the residuary Article?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): 3 years or 6 years, I do not think it will make any difference. My point is that, so far as the suit is concerned, it is for value of the property

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[Mr. V. Subba Aiyar.]

and as such I say it ought to be 3 years. I may at the same time bring to the notice of the House that it was originally put in as one year in accordance with the Limitation Regulation elsewhere. But the Select Committee thought that it must be three years as for an ordinary suit for money. Therefore we raised the period from one year to three years. My friend ignores the fact that it is a suit for money.

In the case of vendors of land, we have already passed article 77, which fixes the period at three years, so that I do not know whether much will be gained by adding the expression "when the suit is by a party to the proceedings" because he is entitled to damages, and all that he will get is only 3 years.

DEPUTY PRESIDENT: If a man has got property in Travancore, I think it is his duty to make his own arrangements.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly.

MR. JOSEPH PANJIKARAN (*Shertalai*): In the case of an ordinary trespasser, it is 12 years.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Here it is only a question of value of the property. I do not think there is any hypothecation question.

According to my friend, notice is issued under the Land Acquisition Regulation to the person who is the accredited owner of the property, wherever he may be.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If no notice is served?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If no notice is served, it will be published in the Gazette or under the Civil Procedure Code, some way or other notice may be issued. Notices are sent to them by post.

DEPUTY PRESIDENT: The fact that he is an absentee landlord ought not to give him larger rights.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My contention is that when the notice is served upon a man he is a party to the proceeding. There is no objection if the notice is served on him wherever he be, let him be in Tibet or anywhere else. What I say is that once you serve him with notice, you are making him a party. That is all. Mr. Subba Aiyar contemplates that everybody is supposed to have an agent and would be served with notice. What is the difficulty then?

DEPUTY PRESIDENT: Do you wish to reply, Mr. Subba Aiyar?

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have nothing more to say.

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The amendment was put to the vote and carried, 15 voting for and 14 against.

DEPUTY PRESIDENT: The question is that Article 98 as amended from part of the Bill.

The motion was carried and the Article as amended was added to the Bill.

*Articles 99 to 104.*

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I beg to move that, in column 1, the expression "when the suit is by a party to the proceedings" be added at the end.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I accept it.

The amendment was accepted by the House.

DEPUTY PRESIDENT: The question is that article 99 as amended form part of the Bill.

The motion was carried and the Article as amended was added to the Bill.

DEPUTY PRESIDENT: There are no amendments from articles 100 to 104. So I take it that the House agrees to their being accepted.

The motion was carried. Articles 100 to 104 were added to the Bill.

*Articles 105 to 118.*

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I propose, as I did on a previous occasion, to substitute "paddy" for "grain" in column 1, line 1 for the reasons I have already stated.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I have no objection to accept it.

The amendment was carried.

DEPUTY PRESIDENT: The question is that Article 105 as amended form part of the Bill.

The motion was carried and Article 105 as amended was added to the Bill.

DEPUTY PRESIDENT: There are no amendments from Articles 106 to 118 and I take it that the House agrees to accept their forming part of the Bill.

The motion was carried and the Articles were added to the Bill.

*Article 119.*

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Sir, I beg to move that the expression 'or grain' be deleted. The existing provision of law, be it in Travancore or in British India, does not contain a similar provision. The present article corresponding to Article 119 is 109 ; and that simply refers to suits for the recovery of money due



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[Deputy President.]

under a hypothecation bond on immovable property. Evidently, Mr. Subba Aiyar has been attempting to make this amendment to the existing law on account of a ruling of the High Court with regard to paddy hypothecation bond. The provision of law with respect to that subject was held to be not Article 109 but the residuary Article 100. Their Honors refused to consider a suit on a paddy hypothecation bond as a suit for the recovery of money charged on land. This agitation which originally arose in the Calcutta High Court, slowly crept on to Travancore where the whole question was examined by so eminent an advocate as Mr. Subba Aiyar himself before their Honors in a full Bench.

DEPUTY PRESIDENT: Do you take it that, till then, the impression was that 12 years was the period?

MR. P. K. NARAYANA PILLAI (*Ambalpuzha*): That might be the impression. The Calcutta High Court was the first High Court that started the enquiry with respect to the question of limitation on the subject. I think the ruling of the Judges including Sir Lawrance Jenkins C. J. reported in the 24 Calcutta Law Journal first started the question. Subsequently there have been very many variations in the decisions of the Calcutta High Court itself. Ultimately they veered round to the view that it ought to be 12 years. By that time our High Court by a Full Bench ruling held that it ought to be 6 years. I suppose Mr. Subba Aiyar's attempt is to revive that law. If his attempt were to restore the section to the condition in which it was before the Calcutta decision influenced it, namely, 12 years, there may not be much to be said in favour of the attempt. But I have one serious objection to this proceeding. By 'grain' my friend evidently means 'paddy.'

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe the Select Committee say 'paddy'.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Never mind the expression. I think evidently my friend has 'paddy' in mind when he speaks of 'grain' in this Article. The main difficulty I have to point out is the difficulty arising from fluctuation in the value of paddy. Sir, within living memory the price of paddy has undergone very serious changes. So much so in redeeming a mortgage executed in 1064, when the price of paddy was 5 or 6 chs., the unfortunate mortgagor has to pay one and half times that amount now. That has become the very wide range of change which the valuation of paddy is undergoing. If therefore you are going to allow such fluctuation and of course the tendency of paddy is to look up in the matter of price—if this year you lent out some paddy on a hypothecation bond and the debtor received paddy under the normal expectation that the value of paddy would not be undergoing any serious fluctuation, and if he is allowed to wait and unfortunately it is too well known that the debtors are not in haste to repay and under the encouragement of the statutory limitation the man holds on for 12 years—then he will be hit very hard.

DEPUTY PRESIDENT: What about interest?

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It will be doubling itself. Perhaps Mr. Subba Aiyar is having that as an argument towards me. There is not much difficulty to meet it; if it is two per ten rate of interest that is going to be stipulated, within 5 years the principal will double itself. In the case of money transaction I think it will never exceed half the principal so that the debtor always suffers in the paddy transaction; and in view of the fluctuations in price paddy is greatly undergoing, it is not quite a very serious thing to the creditor to tempt the debtor by giving a long rope to hang himself under the Limitation Act applying the 12 years' rule. It is better that the man is distinctly told that he will have to pay back within six years. Otherwise he would have the trouble of it. In that view I am moving the amendment for the acceptance of the House. I may also point out that in the normal conditions it will be six years as per the ruling of the High Court; if you are going to exclude paddy from the category it will have to be taken under the residuary Article.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second it.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I beg to support the amendment. This is a subject about which even at the very beginning, *i. e.*, when the amending Bill was introduced, there was a heated discussion on this side of the House. I was also one of the members of the Select Committee appointed for the consideration of the Bill. This is one of the very few points on which I had to differ from my brethren, and in this respect I am glad that I was not the only dissenting member. I had two other friends. I think this is a point which requires careful consideration at the hands of the members of this House. Sir, it has been the policy of our Courts and our Legislature and also the customary law that we used to give a different treatment to paddy and money as evident from the different methods employed for the calculation of interest. Travancore being an agricultural country, it is our duty to protect the agriculturists, as the Government have done in several other ways, from the money-lenders' clutches. In view of that fact also, I should think that the reduction of 12 years' period to six years is to the advantage of the agriculturist, and is better than giving him a long rope of 12 years to hang himself. In these circumstances, and having regard also to another pertinent fact which has been brought to our notice by my friend Mr. P. K. Narayana Pillai, *viz.*, the fluctuating condition of the paddy market, I think a very good case has been made out for reducing the period from 12 years to six years.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Sir, I have also sent in an amendment to the same effect. During the first stage of the Bill, many of us raised a protest that the new section should not be introduced and that the period of limitation in respect of paddy bonds should not be extended to 12 years. My own view is

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[Mr. V. Subba Aiyar.]

that the decision arrived at by the High Court, *viz.*, that in the case of paddy hypothecation bonds, the period of limitation should be six years has been correctly laid down. So far as I know, our High Court has not, before the ruling in 36 T. L. R., laid down any decision with reference to limitation in respect of paddy hypothecation bonds. All the prior rulings have been reviewed in the 36 T. L. R. case and their Honors hold that the period of limitation in such cases is 6 years.

DEPUTY PRESIDENT: We are discussing the question from the standpoint of policy alone and not about the correctness of the decision of the High Court.

MR. C. SANKARA MENON (*Quilon*): May I know why, in the case of money borrowed, the period of limitation should be 12 years and in the case of paddy 6 years?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): That is exactly what I have here to explain. What I am submitting is that, till the Full Bench Ruling in the 36 T. L. R. case was passed, it cannot be said that people believed that the period of limitation for paddy hypothecation bonds was 12 years; for, we had no ruling till then. The question had been set at rest and the law has been correctly laid down, and I submit that this Council ought not to interfere and lay down a new rule saying that, in respect of paddy hypothecation bonds, the period of limitation should be 12 years. The value of paddy is always fluctuating. Generally, we find in the case of paddy bonds, the loan is for a very short term, say, one agricultural year. Again, in the case of paddy, we also find that the interest is very high. It will always be ruinous to the debtor if we extend the period of limitation and encourage paddy loans. I am not for allowing a greater period in respect of paddy hypothecation bonds than 6 years now laid down by the High Court. For these reasons, I am for opposing the provision in the Bill and for supporting the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I oppose the amendment. My main reasons are that there should be no difference so far as the period of limitation is concerned between paddy and money. My friend Mr. Narayana Pillai, at the earliest stage of the debate, said that, so far as Travancore is concerned—and he quoted rulings also—paddy is equally considered to be money and that therefore no difference should be made between paddy and money. Therefore, I do not see why there should be any difference on that ground. If we go to the general principle and the frame of the Limitation Regulation, we find that whenever any relief is sought to be charged upon immovable property, the period of 12 years is supposed to be the general rule. I may in this connection draw the attention of the House to the admitted fact, *viz.*, that in the case of Jenmies, *michavaram* dues, whether in kind or otherwise, are allowed to be realised for the full period of 12 years, because, even under the existing Regulation,

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the Article now in force says "payment of customary dues may be realised as a charge upon the immovable property," so that *michavaram* and other dues can be realised in the shape of paddy for 12 years.

MR J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Do not these *michavaram* etc., form a primary charge on the land.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is not the hypothecation amount charged upon immovable property? I do not see any difference between a hypothecation bond for money and that for paddy. The property can be sold in both cases.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Will not priority be given to the Jenmies' charges over the charges of hypothecation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I say the principle is the same. In the one case the property is given under the Jenmi Regulation and not under the Limitation Regulation. The Limitation Regulation says that if a jenmi wants to bring in a suit for *michavaram* dues, he must file it within 12 years and recover it in the shape of grain. These are the two things. The next thing is that, as Mr. Narayana Pillai knows, till the decision in the Full Bench ruling was passed, the practice was—

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know whether there are not earlier rulings?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, so far as I am aware.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Is there not a ruling in 10 T. L. R.?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is not upon a hypothecation bond and with respect to immovable property.

MR. N. RAMAKRISHNA PILLAI (*Vaikom* cum *Ettumanur*): Is there any ruling prior to the 36 T. L. R. case to the effect that with respect to paddy hypothecation bonds the period is 12 years?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the case of hypothecation in respect of paddy, the question never came up before, because, as Mr. Narayana Pillai suggested, a debt was admitted, a suit was filed and a decree obtained; everybody thought that it was 12 years. Nobody ever took the trouble of taking it to the High Court. Even in that particular case, there were other contentions also; and when I appealed, all those contentions were also pressed. That was how the whole question came up for discussion. Until that case went on appeal, there was no consideration given to that point. Till then, the period was 12 years. Then how we came to six years is this. Before the 10 T. L. R. ruling, there was a question as to whether a bond for grain could be regarded as a bond at all, and therefore they said that the provision relating to bonds will not apply but only the residuary Article referring to recovery of money, *i. e.*, three years. After that, at once instead of amending the definition of the term 'bond', what was done

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[Mr. V. Subba Aiyar.]

then was to put in an amendment in the particular clause ignoring the fact that the words "or grain" occur in one or two Articles also. So, even if the bond be for paddy, the suit will be regarded as suit for money or paddy and therefore there will be no distinction, and yet when the case was argued before the High Court, they pointed out, "You amended the particular Clause but not Article 118 and therefore it should be regarded that the Legislature intentionally and purposely omitted to amend it." That was the argument and it was accepted by the High Court. In the 36 T. L. R. case also, the gentleman who appeared and argued pointed out that the omission was merely accidental. It was then said, "If there is such an omission, you must go to the Legislature and get it rectified and not come here because we are not to make laws but we are to interpret them." It is after that that the present amendment has been put forward. They based their judgment upon a ruling of the Calcutta High Court, not on a later ruling which followed the earlier ruling but an interim ruling, so to say, which restricted it to 6 years. They adopted that. That ruling has been subsequently modified by the Calcutta High Court where they say the period is 12 years. Therefore it is we are following the ruling which was repealed by the Calcutta High Court. If our ruling is followed, it may lead to difficulties. There is one other aspect of it. Suppose, instead of a suit for paddy, the plaintiff files a suit for money, that is to say, saying so much paddy is due on this date and therefore for the value of the paddy estimated in the plaint, the suit is filed. It may be covered by Article 119, because the plaint will only say that it is the price of paddy, and because we have now amended the definition of the word "bond" so as to include paddy. A bond for paddy will be a hypothecation bond under Article 119 and if you convert it into money on the date of suit, you will have 12 years, so that the only other class of cases is a case where a decree is for payment of paddy to be returned in kind. It is only in such cases that the difficulty arises.

MR. JOSEPH PANJIKARAN (*Shertallai*): Where is the harm if we delete the expression 'or grain'?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We have adopted it and we have removed the distinction in all cases. That being the case, I do not see any cause for making an invidious distinction so far as the present amendment is concerned.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think there is a Full Bench decision that, in all such cases, it must be for paddy and not for money.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Even there, I may say, the Full Bench would have held that a bond is only a bond for money. The definition in the Limitation Regulation was that a bond was an agreement for money. That was the definition which Mr. P. K. Narayana Pillai amended by substituting 'paddy' for "grain" and "or grain", was put in only now in the present Bill. It is not in the existing Regulation.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is where the bond is for grain and the prayer in the suit is for return of grain. That is the recent Full Bench Ruling?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If so, it only supports me. It will be 12 years. I think it is for converting it into money and recovering it that it was said that paddy is not movable property. I believe that is the ruling that, in the alternative, when a decree is given, it must be for the value of the grain, and so, it will not apply to paddy.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): By interpreting section 263 of Civil Procedure Code.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): They said that movable property will not include paddy. That is the Full Bench ruling, if I remember right. So that, I say all these conditions then suggest only one conclusion, *viz.*, that there ought not to be any difference so far as paddy hypothecation bond is concerned. As for fluctuation of prices, I only want to ask whether the amendment is in the interest of the debtor, whose interest Mr. Nidiry wants to safeguard or whether it is in the interest of the creditor. I shall take one instance. In the case of paddy, the interest is 2 per 10—it may be 15 per cent or more—in all these cases, the interest becomes equal to the principal in about 5 years. Ordinarily then, no creditor will allow the interest to be in arrears for more than six years, for he will not get any interest in excess of the principal, so that it is not to the interest of the creditor. But in the case of a regular debtor, he pays interest year after year or at every harvest and he is no defaulter at all. What you are doing is to try to force the creditor to ruin such debtor's prospects of redeeming the property and to take the property out of him altogether by providing a shorter limitation.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Are there not greater chances of ruin if during all the 12 years interest has to be paid?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): He cannot be benefited because he can get only interest up to the principal which he will get in 5 years. By remaining quiet for more than that period, he will not get one extra cash. Therefore, I do not think that, so far as interest is concerned, he is benefited. So far as the debtor is concerned, a regular debtor who is paying interest regularly will not find it difficult to pay by starting a chitty or contributing to an insurance fund. The amendment will not allow him the necessary time required for raising the money by the aforesaid means, although the creditor will be prepared to extend it. Lastly, in the case of fluctuation of prices—

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Is not paddy transaction more advantageous to the creditor than money transaction?

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[Mr. T. K. Velu Pillai.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): My friends Messrs. P. K. Narayana Pillai and N. Ramakrishna Pillai hailing from North Travancore will realise that it is not money that is required for agricultural purposes but it is paddy. In North Travancore, it is as current as money itself. That being the case, I do not know whether we should go back from the customs and habits in those parts and say that paddy may be treated as money for some purposes and otherwise for other purposes.

So far as the creditor is concerned, he would certainly take care to sue the debtor and get back his money with interest at the earliest opportunity in order that he may not lose interest. The longer the period, the less the amount of interest that the creditor gets, because the court will give a decree only for one and a half times the capital. The creditor will therefore be anxious to get back his money as early as possible so that he may invest it with some one else. If we care for the interest of the debtor, as I have already stated, the regular debtor should be given as much time as possible so that he may be in a position to discharge the whole liability without difficulty. In the interest of the debtor, therefore, we must not reduce the period of limitation and compel the creditor to take legal steps against the debtor before the debtor is in a position to collect money for repayment. All these facts were taken into consideration by the Select Committee, and, as a matter of fact, it was in the interest of the debtor that the period of limitation was made 12 years. I do not think there is any reason why we should go against the opinion of the Select Committee in this matter. I therefore oppose the amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): In spite of Mr. Subba Aiyar's speech, the points raised by Mr. P. K. Narayana Pillai remain unanswered. There was mention made of the fluctuation in price. Fluctuation in the price of paddy has been said to be very much more than in the value of money. Taking into consideration the fact that paddy rises and will continue to rise in price, if you allow the debtor to sleep over the matter and not think of repayment for twelve years, the result will be that, at the end of 12 years, he will have either to part with the whole of the paddy that he possesses, which would then fetch very high price, or find money enough for the purchase of the quantity of paddy due. Therefore, apart from the question of fluctuation—and certainly there is fluctuation—there is the further risk that a *para* of paddy which is now worth a few fanams would be worth very much more 12 years hence. The price would not have increased so much in 6 years as in 12 years. Whatever be the development of agriculture and industries, it is our experience that we get, nowadays, for our money less paddy than we used to get in former days. As my friend Mr. P. K. Narayana Pillai observed while utilising it as an argument for another purpose, one *Kallurkadan para* of paddy, which could be had for 7 or 8 chs. 25 years ago, now fetches one rupee and more. It has been said that, under the Jenmi-Kudiyan

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Regulation, it was competent for the *Jenmi* to sue the *Kudiyan* for *michavaram* within 12 years from the due date. All of us know, Sir, that this arrangement is prejudicial both to the *Jenmi* and to the *Kudiyan*. The *Jenmi* thinks that there is no hurry in the matter of filing a suit against the *Kudiyan*, because there is a very long period of 12 years. The *Kudiyan* thinks that he need not hasten because there is a period of 12 years, with the result that both parties suffer. The *Jenmi* does not get all that he wants. The *Kudiyan*, unfortunately, is compelled to pay very much by way of interest. Now, Sir, there is no questioning the principle that the debtor is entitled to protection more than the creditor. The creditor is a strong man who is able to take care of himself. Any man who is poverty-stricken or unable to command cash will easily undertake to pay high rates of interest. He will be prepared to oblige the creditor. So, if it is a question of conferring any benefit upon any class of people, the debtors are entitled to such benefit more than the creditor. As I said on a previous occasion, the maxim of English law, "Once a mortgage always a mortgage," was invented by the English Judges to protect the debtors. In the case of paddy, although we fix the period as 6 years, we have really 12 harvests.

DEPUTY PRESIDENT: In our parts of the country, 6 years mean only 3 harvests.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I know, Sir, that there are some lands which will not produce anything at any time. I say, ordinarily, in most parts of the country, there are two harvests every year. Therefore, Sir, let us eschew the consideration of those lands which lie fallow and which will not yield anything.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is Mr. Velu Pillai aware that, in Travancore, a large extent of land yields only one crop every year?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I know that; but, I maintain that the vast bulk of cultivable land, cultivated with paddy, is double crop land.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Even that is not correct.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): It is certainly open to my friend to quote facts and figures to contradict me. I am only using this for the purpose of argument. I am not to be fixed with any liability. I maintain that I am right so long as my friend does not quote any figures in contradicting me. Sir, if, as usual, interest is paid every harvest, there will 12 instalments in 6 years. It was maintained by Mr. Subba Aiyar that the provision was advantageous to the debtor. That does not commend itself to be the case, although there is the fact that, if the creditor takes care to take legal steps against the debtor in time, he will be able to get something in addition to the interest which amount may also be added to the capital. There is the other side of the question. The creditor may sometimes be getting interest for some time. He might not have

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[Mr. P. K. Narayana Pillai.]

given any receipt. He may sue the debtor for the interest also. The condition of the debtor, Sir, in all countries is particularly pitiable. I know of some cases where, for a debt of one pound, 15 or 16 pounds were paid by way of interest alone, the debt still remaining unliquidated. The position of the debtor is worse in the case of paddy loans. So, the extension of the period of limitation to 12 years is not advantageous to the debtor. Further, Sir, it was stated that, in the case of paddy loans, there was facility for payment in kind. That is an argument which cuts both ways, sometimes to the advantage of the creditor and at other times to that of the debtor. Considering the general principle of legislation, *viz.*, that it should be in the interest of the weak party, and considering the fact that, in Travancore, mainly an agricultural country, the people are at the mercy of paddy-lenders, it will really be very hard if we allow the creditor to wait for 12 long years and then, with all manner of calculations, to pounce upon the debtor and make a prey of him. This is a matter which affects the whole country. If a man wants remedy against a debtor, let him come forward within 6 years. Let him not allow the interest to accumulate; and let him not also be allowed to get so much regularly, by way of interest, year after year—rather harvest after harvest—for such a long period as 12 years. Therefore, Sir, I maintain that the amendment of Mr. P. K. Narayana Pillai is very necessary, and I commend it for the acceptance of the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I have got to make a few observations by way of reply to my learned friend, Mr. Subba Aiyar. No doubt, I said at the very outset that, so far as the law as laid down by the Travancore High Court is concerned, it is very clear that, for certain purposes, paddy is equivalent to money in Travancore, especially in North Travancore. As to that, there is no question. But, here, we have to view the question from the standpoint of jurisprudence when we say that movable property, other than money, can be charged upon immovable property. Mr. Subba Aiyar suggests that here paddy may be charged upon immovable property. We have heard of money being charged and of nothing else.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Suppose, in this clause we delete the words "or grain". Even then, could not paddy be charged upon immovable property, in the light of the definition of "bond" as amended by him?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is only the definition. It does not imply any charge upon property.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): This clause deals with hypothecation. A hypothecation bond should be a bond first of all.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Hypothecation in modern law means simply a guarantee. In Roman law, hypothecation meant a different thing altogether. It is merely a guarantee in our

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law. It is something like a pledge so to say. In the case of movables usually, the possession of the thing is surrendered. It is not charged upon immovable property. My friend Mr. Subba Aiyar suggested that paddy was charged upon land for purposes of the Jenmi-Kudiyan Regulation. I do concede that it is so. But we are proceeding further. At this rate animals may be charged upon immovable property; elephants may be charged; cocoanuts may be charged.

MR. V. SUBBA AIYAR (*Adaitional Head Sirkar Vakil*): Even if the period of limitation is 6 years, may I know what the decree will be?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The decree will be for recovering paddy.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): On what security is that decree given? Is it not given on the security of immovable property?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I doubt the wisdom of such decrees.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is my friend aware of a recent Full Bench decree of the kind?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): This question has not been argued, I fear.

Therefore, I am submitting, viewing the question entirely from a juristic standpoint, to treat paddy as something liable to be charged upon immovable property is foreign to the ordinary law of contracts relating to pledge and bond. Occasionally, Judges, with their usual leniency in favour of men who have parted with hard cash, as they put it, are tempted to treat these paddy transactions as charges upon immovable property also. I do not deny the existence of such rulings.

DEPUTY PRESIDENT: Pledge, charge, hypothecation bond, all these may conflict with our ideas of jurisprudence. But these are common transactions in the country.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am just considering the general principles of jurisprudence in regard to this question. Because I said that paddy is equivalent to money for certain purposes, to elevate it to the position of having the capacity to be charged upon immovable property, with its rapidly increasing rate of interest is, I think, not quite an acceptable position. And this question of fluctuation of prices is another difficulty. Even if we reduce the period of limitation to 6 years, nevertheless, the debtor—on whose behalf we are troubling ourselves so much—over whom the creditor no doubt has a tight grip, may be made to renew the bond, when the period of 6 years is about to expire. The creditor will see that tardiness on the part of the debtor in the matter of repayment of paddy is encouraged. Considering the facts that the High Court have ruled that the loan may be returned as paddy itself and that paddy is the staple food of the people of the country, to place a restriction upon the circulation of paddy by tying it up for 12 years in one place with all the

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[Mr. V. Subba Aiyar.]

incidental changes in its value, appears to me, Sir, to be a real hardship to the people of the country. It is the very same idea that has been troubling my friend Mr. T. K. Velu Pillai also. Therefore, I press the amendment to a division.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As I have already stated, Sir, if, in a suit, the prayer of the creditor is for *money* alone, the period of limitation should be 12 years, while, if the relief sought is for obtaining *paddy*, it is to be six years,—that is what the amendment proposes—I do not see any reason for maintaining that invidious distinction. I do not think any further argument is necessary.

The amendment was put to the vote and lost.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I demand a poll.

A poll was taken with the following result:

AYES—18.

| | | | |
|---|---|---|---|
| 1. | Mr. T. K. Velu Pillai | 10. | Mr. Tariatu Kunjitomman |
| 2. | ,, J. John Nidiry | 11. | Rev. Fr. Kuriakose Vettikapalli |
| 3. | ,, V. Kunjukrishna Pillai | 12. | Mr. T. Lakshmana Pillai |
| 4. | ,, G. Paramesvaran Pillai | 13. | ,, Joseph Panjikaran |
| 5. | ,, N. Ramakrishna Pillai | 14. | ,, K. Paramesvaran Pillai |
| 6. | ,, T. M. Chidambaratanu Pillai | 15. | ,, A. Govinda Menon |
| 7. | ,, P. T. Thomas | 16. | ,, Paul V. Daniel |
| 8. | ,, P. K. Narayana Pillai. | 17. | ,, A. Hoogewerf |
| 9. | ,, T. Kumara Pillai | 18. | ,, C. P. Kochukunju Pillai |

NOES—19.

| | | | |
|---|---|---|---|
| 1. | Mr. V. Subba Aiyar | 10. | Mrs. M. Poonnen Lukose |
| 2. | ,, S. Paramesvara Aiyar | 11. | Mr. A. J. Van Ross |
| 3. | ,, R. Krishna Pillai | 12. | ,, K. V. Natesa Aiyar |
| 4. | ,, K. George | 13. | ,, M. Raja Raja Varma |
| 5. | ,, J. Stephenson | 14. | ,, S. C. H. Robinson |
| 6. | ,, R. Dhanukoti Pillai | 15. | ,, M. R. Madhava Variar |
| 7. | ,, I. C. Chacko | 16. | ,, K. C. Mammen Mappillai |
| 8. | ,, K. Paramesvaran Pillai (Ag. Director of Agriculture and Fisheries) | 17. | ,, N. Kumaran |
| | | 18. | ,, Trivikramar Vasudevar |
| 9. | ,, W. H. Pitt | 19. | ,, N. Padmanabha Pillai |

The amendment was declared lost.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I move a verbal amendment, to substitute "paddy" for "grain"?

MR. V. SUBBA AIYAR (*Additional Head Sikar Vakil*): In the third column also, I am prepared to accept it.

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The amendment was carried.

The question that Article 119, as amended by the House, do form part of the Bill was put to the vote and carried.

The Article was added to the Bill.

***Article 120.***

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The first portion I am not moving in view of the decision of the Council with regard to a prior motion. In the third column, a similar amendment which I suggested to the previous amendment may be made. I beg to move that after the word "default" the following may be inserted: "and on or before the date on which the last instalment is due".

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I accept the amendment. In the first column also "or more" should be added after "one", and "instalment" should be changed into "instalments." "Grain" may be changed into "paddy".

DEPUTY PRESIDENT: The question is that Article 120 as amended by Messrs. Subba Aiyar and P. K. Narayana Pillai form part of the Bill.

Article 120 as amended was added to the Bill.

***Articles 121 to 143.***

DEPUTY PRESIDENT: The question is that Articles 121 to 143 form part of the Bill.

Articles 121 to 143 were added to the Bill.

***Article 144.***

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move that Article 133 of the present Limitation Regulation be inserted as Article 144 of the amending Bill and the rest of it renumbered. That is to say, in the existing Limitation Regulation, Article 133 which opens the third division of the limitation schedule is to the following effect:—

(*a*) A complaint (not preferred by, or under the orders of, the Government) of an offence punishable under Sections 298, 323, 334, 352, 355, 358, 490 and 492 of the Penal Code.

(*b*) A complaint (not preferred by, or under the orders of, the Government) of an offence punishable under Sections 447, 500, 501 and 502 of the Penal Code.

The period of limitation is 30 days with respect to clause (*a*) and 90 days with respect to clause (*b*) from the date of the offence.

Evidently the offences that are meant are petty assaults, defamation and trespass. In the case of such petty offences, a limitation period for the preferring of complaint was orginally fixed in the Travancore Limitation Regulation. No doubt in the British Indian Act it does not exist

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[Mr. N. Ramakrishna Pillai.]

even in the Limitation Regulation which was superseded by the present enactment in India. For the quietus of criminal litigants, time-limit has always a salutary check. That it should be dropped did not appear to me to be a tenable position. It is therefore that I said that I would incorporate the existing article with respect to criminal offences and complaints relating to them, when not preferred by or under the authority of Government. I thought that it will be an innocuous provision, going a great way for quieting unnecessary bickering between many people before a Magistrate. So I beg to move the existing amendment.

DEPUTY PRESIDENT: Is the existing provision anywhere in British India?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am perfectly indifferent. I may say that it has been sufficiently explained in the statement of objects and reasons as follows:

"The existing law provides for short periods of limitation in the case of complaints relating to certain offences. It is somewhat anomalous that complaints should be brought in under the heading of applications. It will be remembered that a complaint need not be written, but may be oral. Mention of applications to criminal courts is incongruous with the structure of the Limitation Act, which deals very largely, if not wholly, with civil rights and liabilities. If it is felt that there should be provisions of limitation with regard to complaints relating to any offence, then, the appropriate manner is to provide them in the Criminal Procedure Code."

That is all that I have to say in the matter. The reasons for omitting it have been specifically stated. At any rate, I have no objection to put it in.

DEPUTY PRESIDENT: Do you accept it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have no objection to accept it.

The amendment was accepted by the House.

DEPUTY PRESIDENT: The question is that Article 144 form part of the Bill.

Article 144 as amended by the Council was added to the Bill.

***Articles 145 to 161.***

DEPUTY PRESIDENT: The question is that Articles 145 to 161 form part of the Bill.

Articles 145 to 161 were added to the Bill.

***Article 162.***

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I beg to move that the words "six months" be substituted for "do." in column 2.

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The period of limitation according to the Bill is 90 days. I will have it as six months. The British Indian Act also says six months. This is an important matter with regard to the filing in court of an award in a suit and it is better to give plenty of time for the filing. If it is acceptable—

DEPUTY PRESIDENT: I cannot say. You must take the responsibility in the first instance of moving it.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I move it.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I daresay that it is in the knowledge of the House that, so far as these awards are concerned, they are only very few in number and great inconvenience may be caused. Anyhow I have not the slightest objection to accept the amendment.

DEPUTY PRESIDENT: Is it in the interests of the administration of justice to allow such a long period of six months? Do you press it, Mr. Ramakrishna Pillai?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I press it, Sir.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I accept it.

The amendment was accepted by the House.

DEPUTY PRESIDENT: The question is that Article 162 as amended form part of the Bill.

Article 162 as amended was added to the Bill.

DEPUTY PRESIDENT: The question is that Articles 163 to 165 and the Second Schedule form part of the Bill.

The motion was carried and Articles 163 to 165 and the Second Schedule were added to the Bill.

The Council adjourned for lunch at 2-19 and re-assembled at 3-6 of the Clock.

***Clause 34.***

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, I beg to move that Clause 34 of the Bill be deleted. Unfortunately this is one of the new clauses about which there was so much difference of opinion on this side of the House even at the initial stage. As a member of the Select Committee, I had to differ from some of my friends on this point also. It will be seen from my dissenting note that I am strongly of opinion that this Clause should not find a place in the Bill. It is one of the well-known principles of legislation that retrospective effect should not be given to any piece of legislation. I am afraid that this attempt, though necessitated by certain rulings of the High Court, is no excuse for making any innovation on that well-known principle. Further, I am of opinion, that, if this innovation is allowed,

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[Mr. V. Subba Aiyar.]

there will be other disturbing elements to crop up along with it, because under the 36 T. L. R. ruling many people have submitted themselves to their fates and if, by this new innovation, new rights are created in favour of some people, it will be another source of dissatisfaction among the other people. I think, under these circumstances, it is highly necessary that we should delete Section 34.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I second it. In seconding the amendment, I do not mean to discuss at length the merits or demerits as enough has been said on the point in the general discussion of the Bill. I would only remind the members of the House about one fact in connection with this matter. After the High Court ruling, which, it is said, for the first time, interpreted the law of the country as laid down by the existing law of limitation, Sir, many transactions might have taken place concerning the very properties which, if this Section 34 is enacted, it may try to charge against the encumbrance under the existing law. The properties which are now sought to be brought under this Clause might have subsequently been hypothecated or mortgaged to new creditors who, relying on the ruling of the High Court, might have lent money or paddy. We do not know how many such transactions there might have been concerning such properties. But considering the volume of transactions in paddy and money in Kuttanad and other places, there is every likelihood of these properties being taken by creditors believing that the charges that were existing on them have already become extinguished by lapse of time and hoping that the money that they have advanced would be the first charge on those properties. If this Clause becomes part of the statute, the effect will be that all these hopes will be frustrated for no fault of theirs. If there is any fault at all, it will be that they followed the ruling of the High Court at the time the transactions were entered into. My submission is that this House should not think of causing hardship to innocent persons for the purpose of helping people who have been negligent in the matter of coming to the Court. On this ground, as well as on the grounds submitted by my friend Mr. Nidiry I support the motion for the deletion of this Clause.

With respect to the question of giving retrospective effect, I submit that it is a legal principle which will not probably inconvenience many. But, the difficulty that I have adverted to is the latest difficulty that stares me in the face. Therefore, with these observations, I second the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to oppose the amendment. I do not grant that it should not always be that the Legislature should intervene and give retrospective effect to legislative enactments. But there are certain cases in which the Legislature has a right and duty to intervene. This is one of such cases. Mr. P. K. Narayana Pillai pointed out that the accepted practice and the understanding of the people in places where these kinds of

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transactions are prevalent were that a period of 12 years' limitation will apply and that creditors and debtors have been dealing with each other on that understanding. I informed the House when I introduced the Bill itself that very many decisions of the Alleppey District Court will corroborate my statement and that very many suits were decreed and that the people were under the impression that 12 years' limitation will apply. But when it came to the Full Bench ruling in 36 T. L. R., it was decided that a six years' period of limitation will apply. So, I say it is the duty of the Legislature to rectify the error or injustice done by the High Court in the matter of such an interpretation directly against—

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether the High Court has committed an error?

DEPUTY PRESIDENT: That does not follow.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No. In interpreting the law as it stood, the High Court was perfectly right. But, the public understood the law in a different way. When that is the case, I say it is the duty of the legislature to intervene. As an example, I will only say that for foreclosure it was thought in Madras that 50 years' limitation would apply. But, when it went to the Privy Council, their Lordships said only 12 years' limitation would apply. But, when people were under the impression that 50 years' time will apply, their rights were interfered with and therefore the Legislature had to intervene. I will only refer to Section 31 of the Indian Limitation Act which runs as follows:—

"Notwithstanding anything contained in the Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule, a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of passing this Act, or within 60 years from the date when the money secured by the mortgagee became due, whichever period expires first, and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of the Act, either in a Court of first instance, or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable".

"(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty second day of July 1907 and before the passing of this Act, either in a court of first instance or of appeal on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act, and on such restoration, the provisions of sub-section (1) shall apply".

So that sub-section 2 of Clause 31 was adopted bodily in the Bill. In the Select Committee it was discussed and found that it may not be desirable to say that a suit that has been decided should be re-admitted. Therefore, it was thought that it would be better to restrict the scope of Clause 34 to pending suits since the date of the Full Bench ruling. So that people who have not sued and who have sued or whose suits are pending in the Appellate Courts may be granted relief in accordance with the principle adopted in British India. Otherwise people will



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[Mr. V. Subba Aiyar.]

have to be told one fine morning that their suits are barred. It is to give relief to such people that the present clause has been drafted and the Select Committee considered it in all its aspects and I believe restricted the scope of it in the least inconvenient way possible. On principle, I think, I cannot accept the amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What does he say about those persons who were prompt enough to go to the Court and had been defeated? Provision is made in the Bill only for persons who have not filed suits at all and whose suits are pending in Courts.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In my opinion, they too ought to be protected. But the Select Committee was against it and I thought that I should give in to the wishes of the majority. I may say that the principle has been carried to the extent to which it ought to be carried.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether he does not think that some of the properties that would now be brought under the liability under this section may have been hypothecated or mortgaged?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think that such a contingency will arise for the reason that an acknowledgment may be made in ever so many ways and it need not be registered. Therefore, it is not possible for a person to know whether a deed is registered or not. Therefore, if a person advances money on security, he will not advance the same without an encumbrance certificate. When that certificate is there, he will go to the Court and so he is barred. I do not think anybody will be foolish enough to advance money when there is no encumbrance certificate. Even if he does so, an acknowledgment may be made by the party in the interval. Therefore, I say the acknowledgment need not be registered and as such it is not open to the new creditor to advance money under the impression that the original debt might have been barred.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether there is any means for us to be sure that such advances have not been made?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I daresay my friend knows the ordinary principle, *viz.*, if a prior mortgagee allows a document of his to be handed over to a subsequent mortgagee or to the mortgagor, the latter does not get any right to the property if he does not get the consent of the prior mortgagee or gets a release from him. I do not think any subsequent mortgagee will be justified in getting it. I do not think that we will be justified in upholding the cause of people who are careless.

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MR. JOSEPH PANJIKARAN (*Shertallai*): What about the time-barred hypothecation bonds, which people are particular in getting back?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe encumbrance certificate is ordinarily for 12 years.

DEPUTY PRESIDENT: Mr. Panjikaran, you do not recognise the force of Mr. Subba Aiyar's argument that there may be an unregistered acknowledgment.

MR. JOSEPH PANJIKARAN (*Shertallai*): There may not be. So, I ask whether there is any assurance that such advances of money may not have been honestly made.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If a person advances money on second hypothecation knowing full well the existence of a prior charge and thinks wrongly that mortgage might have been paid, I say it is wrong. The second point is that if anybody advanced money on security, it was his duty to see that the first mortgage is barred and that the first mortgagee's document is insisted upon. I think equity is for those who are vigilant and not for those who are not vigilant. Therefore I do not think that there is any inequity to the second mortgagee.

DEPUTY PRESIDENT: Mr. Nidiry—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir,—

DEPUTY PRESIDENT: You did not stand up, Mr. P. K. Narayana Pillai. Now it is too late.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I have also sent in an amendment.

DEPUTY PRESIDENT: That is an identical amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Nidiry has moved his amendment. I need only support him.

DEPUTY PRESIDENT: I was just saying as a matter of order, after Mr. Subba Aiyar spoke nobody else stood up, and I called upon Mr. Nidiry as the mover of the amendment to stand up. After that it seems to me that you are out of order. Still, if you have something to urge in respect of the motion, I allow you to do it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am thankful for the permission accorded to me from the Chair.

The only precedent upon which Mr. Subba Aiyar attempted to justify the retention of Clause 34 is Section 31 of the Indian Limitation Act now in prevalence. With respect to that legislation, my submission is that there may be justification for that. Section 31 of the Indian Limitation Act was necessitated by a conflict of authorities between two High Courts in British India.

DEPUTY PRESIDENT: Is it not a Privy Council decision which finally set the question at rest?

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[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is true. I am coming to that. The view taken by the Madras High Court was in sharp conflict with the view of the Calcutta High Court. For a number of years, both the Presidencies were viewing the question independently. While matters were continuing like that, somebody stepped out and went up to the Privy Council and the Privy Council gave its decision in favour of the Calcutta High Court and against the Madras High Court. That was a case in which the voice of the sovereign speaking through the Courts led people to assume a certain definite attitude with respect to the article in the Indian Limitation Act. I ask, have we any parallel in Travancore with respect to that?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): 36 T. L. R, is a corresponding decision because it is a decision passed by His Highness the Maha Raja.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The question was never raised in any of the Travancore Courts as to the particular article of the Limitation Regulation in the schedule that would be applicable to paddy hypothecation bonds. For the first time in the 36 T. L. R. case, the Court had to go into the question, not on the footing of decided cases but through an interpretation of the statute bearing upon the question. Their Honors had to come to the conclusion that Article 109 of the Limitation Regulation would not apply to paddy transaction. That was the first voice of the Sovereign in Travancore which proclaimed the law upon the subject. Such being the case, those persons who take their stand upon that interpretation must necessarily be protected. After the decision in 36 T. L. R., various transactions might have been entered into with respect to paddy transactions between parties on the footing that hypothecation bonds relating to paddy delayed beyond 6 years are nullities. Now if such transactions have been entered into, that we sitting here as legislators should think of upsetting such transactions appears to me, Sir, rather a violent procedure. Therefore the case of British Indian Act stands on a different footing. People were induced to believe by the highest tribunals in the province what the law would be, and the first time there was a disturbance, the legislature had to interfere to restore confidence.

My friend's argument is that people have been under an erroneous impression. I am prepared to concede the statement of my friend which he has certainly taken out of my own mouth (*Laughter*). Therefore, my friend may rest assured with that. To me it seems people have been under the impression that 12 years was the period of limitation. I myself was a party in a litigation of that kind in the Alleppey Munsiff's Court. In that case I happened to purchase some properties over which a paddy hypothecation bond was over-hanging. I purchased the property and I was sued along with the original mortgagor. As usual we do not know the difficulties and facilities that may lie in our way. I raised the question of limitation, and it proved

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to be a weapon of strength in my favour, and I was saved by the ultimate decision of the High Court on this question. So, when many of us did not know really what the situation was until it was definitely pronounced by the High Court that this ought to be the law, Mr. Subba Aiyar is going to force the analogy of British India. I am submitting that that analogy ought to be interpreted in favour of the position taken by my friend Mr. Nidiry and myself. For the only decision, so far as the Travancore High Court is concerned, in which the pointed attention of the Court was drawn to the controversy, was in 36 T. L. R. which my friend proposes to disregard. If, as a matter of fact, the decision has not been woven into the fabric of law, then there would have been some justification. And further a number of persons have all the while been foiled in their attempt to recover money under paddy hypothecation bonds and they have received their quietus under the ruling of the High Court. It is very difficult to compel the sympathy of this section of the House in the case of those laggards, whose suits are not now pending, and who are not contemplating to institute suits, and in whose case it is proposed to make a distinction.

Then there is another principle which Mr. Subba Aiyar pointed out a little while ago in arguing against the motion. The Limitation Regulation is after all a law of procedure ; it is not a law of substantive rights and it is frequently laid down by courts of law that nobody has any vested right in a course of procedure. Now, what he says is, we need not trouble ourselves about the law of limitation, since it controls only procedure and the law on the date of suit would control the suit. But the law obtaining at the date when the suit was filed ought not to be unduly interfered with and a subsequent law should not be made applicable to any suit. If otherwise he is supplying another weapon to a litigant who proposes to fight on an entirely different plane; Mr. Subba Aiyar—he will excuse me for using the word—*unfairly* interferes and says that in this regulation we are furnishing a new weapon to a litigant, just to smash his opponent. I am sorry I have to call in question the fairness of such a procedure. On these grounds, I am bound to support my friend Mr. Nidiry.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I have nothing to add to what has already been said.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I have also nothing to add except that the analogy is complete in this case. The highest court in the land ruled in 36 T. L. R. case and that is the same ruling in the Madras High Court and in the Privy Council. I have nothing more to say.

The amendment, that Clause 34 be deleted, was put to the vote and carried.

KHAN SAHIB M. K. KHADIR PILLAI (*Nominated*) : I demand a poll.

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[Mr. N. Ramakrishna Pillai.]

A poll was taken with the following result :

AYES—19.

1. Mr. T. Kumara Pillai.
2. ,, Tariatu Kunjitomman.
3. ,, M. N. Pillai.
4. ,, P. K. Narayana Pillai.
5. ,, J. John Nidiry.
6. ,, T. K. Velu Pillai.
7. ,, P. T. Thomas.
8. ,, The Rev. Fr. Kuriakose Vettikkapalli.
9. ,, T. Lakshmana Pillai.
10. ,, G. Paramesvaran Pillai.
11. Mr. Joseph Panjikaran.
12. ,, K. Paramesvaran Pillai.
13. ,, N. Ramakrishna Pillai.
14. ,, A. Govinda Menon.
15. ,, Paul V. Daniel.
16. ,, T. M. Chidambaratanu Pillai.
17. ,, A. Hoogewerf.
18. ,, C. P. Kochukunju Pillai.
19. Khan Sahib M. K. Khadir Pillai.

NOES—16.

1. Mr. K. George.
2. ,, R. Krishna Pillai.
3. ,, S. Paramesvara Aiyar.
4. ,, V. Subba Aiyar.
5. ,, J. Stephenson.
6. ,, K. Paramesvaran Pillai (Ag. Director of Agriculture and Fisheries).
7. ,, R. Dhanukoti Pillai.
8. Mr. I. C. Chacko.
9. ,, S. C. H. Robinson.
10. Mrs. M. Poonen Lukose.
11. Mr. A. J. Van Ross.
12. ,, M. Raja Raja Varma.
13. ,, W. H. Pitt.
14. ,, M. R. Madhava Variar.
15. ,, Trivikramar Vasudevar.
16. ,, N. Padmanabha Pillai.

The motion was declared carried.

DEPUTY PRESIDENT: Mr. Ramakrishna Pillai, I understood you to suggest that you did not propose to move your amendment in substitution of Clause 34 but to add it on to Clause 34. You can move it.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): My amendment is that the following may be added as a new clause :

"*In cases where a court of appellate jurisdiction has within three years before this Regulation comes into force dismissed or rejected any appeal on the ground of any mistake of law on the part of the vakil engaged by the appellant, the court shall on the application of the appellant restore the appeal and decide the same on the merits.*

"EXPLANATION. *The fact of an application for review of judgment having been rejected before this Regulation comes into force shall not bar the restoration of an appeal under this Section.*"

I may be permitted to add one or two words by way of amendment. In the first paragraph the words "made within three months of the passing of this Regulation" may be added between "appellant" and "restore".

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It is in view of the Full Bench ruling reported at page 354 of the Travancore Law Journal Vol. 13, that I propose this amendment. This decision was published only on the 17th Kanni 1099. The Select Committee has unanimously proposed that a new explanation to Clause 5 should also be added and this House has already accepted that proposal. In the interpretation of the Regulation, our courts have followed the British Indian decisions as our Limitation Regulation itself is modelled on the British Indian Act.

DEPUTY PRESIDENT: That is with reference to appeals, and applications for leave to appeal, and not with reference to suits.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Yes. Section 5 itself reads as follows?

"Any appeal or application for a review of judgment or for leave to appeal as a pauper or any other application to which this Section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

There is this provision and the House has also just passed a new provision as an Explanation to Section 5. I submit that our courts have always been very lenient in the interpretation of the Limitation Regulation and we have more or less followed the British Indian decisions in several cases as both the Travancore Regulation and the British Indian Act are similar in several respects. The English law of limitation is stricter than the Indian law, and the Travancore law again has departed in several particulars from the Indian law and the departure has in all instances been on the side of leniency to make the rules of limitation less hard. I may instance this by referring to clauses 7, 10, 12, 14, 17, 20, 21 and 22 in the Bill and the corresponding sections in the existing Regulation. Our courts have also consistently refused to follow the stricter interpretation of the Statute whenever it was capable of a more liberal interpretation. The Full Bench decision I have referred to is a distinct departure from the trend of decisions followed till then by our courts.

In England there is a good deal of authority for the position that a vakil's mistake is no ground for indulgence.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We are not concerned with that. I think the point raised is whether we should give retrospective effect.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I am coming to that presently. In England there is a good deal of authority to show that the mistake of Counsel is not a ground for indulgence. But the British Indian decisions point to a contrary conclusion. The British Indian Act and the Travancore Regulation have sufficiently made it clear that a mistake of law is not inexcusable in all cases. Sections 14 and 5 refer particularly to this. Where a mistake arises by counsel's erroneous advice, clients ought not to be allowed to suffer on account of a *bona fide* mistake of their legal advisers. When through

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[Mr. N. Ramakrishna Pillai.]

mistake or ignorance of law appeals are filed in a wrong court, it has always been regarded as sufficient cause to excuse delay in presenting the appeal to the proper court. Indeed this has never been doubted till the Full Bench decision I have alluded to. In A. S. No. 406 of 1080 (Kolappa Pillai, p. 33) it was held by Chief Justice Mr. Sadasiva Aiyar and by Mr. Justice Eapen that a delay of 3 years in presenting an appeal to the proper court owing to the fact that the appellant by a *bona fide* mistake of law prosecuted the appeal in a wrong court was held excusable. In another case reported in Kolappa Pillai's Unreported Decisions, page 152, it was held that the District Judge was right in exercising his discretion to admit a barred appeal and it was also laid down that "the words 'sufficient cause' in Section 5 should receive a liberal construction so as to advance substantial justice, when no negligence nor inaction nor want of *bona fides* is imputable to the appellant." The reason for admitting the appeal in this case was on account of appellant's busy life. Again in A. S. 4 of 1083 (reported at page 359, Kolappa Pillai) the High Court refused to follow the English decisions which went to the length of holding that 'a mere slip or blunder on the part of a litigant's legal adviser cannot entitle him to anything at all' and held that a delay in presenting an appeal owing to the mistake of the appellant's Vakil was excusable. Their Honours said that the Courts in India are not bound by the English decisions which till recently were not uniform in the matter especially as, even in the case quoted before, two of the Judges followed the English precedents with "great regret". I hope I need not quote any more cases to show what every lawyer in this country knows was the practice till very recently in our courts.

The Full Bench decision reported in 13 T. L. J. goes, as I said, against the current of decisions till then followed by the High Court, that is till 1099. Since the pronouncement of that decision in Kanni 1099, I understand that no less than 20 appeals have been dismissed on the ground that delay caused by counsel's erroneous advice would not be permitted. By the addition of the explanation to Section 5, we have provided that in future after the commencement of this Regulation, such mistakes are excusable. The result therefore is that till Kanni 1099 and after this Regulation comes into force, the law is that mistakes of counsel are excusable; but during the intervening short period a large number of litigants have to suffer on account of this decision. It is to remove this hardship that I have proposed my amendment. The circumstances of this case also show that the legislature should intervene and extend the operation of the new provision we have made in Section 5 to this and all the cases disposed of on the strength of the ruling in this case. I will just refer to one or two observations in this judgment. The mistake of the vakil was that he failed to prefer separate appeals though the client furnished him with copies of decrees and judgments. He committed the mistake of filing a single appeal. Their Honours held that, on account of the prior ruling about a year before, a vakil was bound to put in separate appeals in such cases. It was

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on account of his failure to file separate appeals that the case was decided against the parties who were in this case minors.

Their Honours observe :—

"As already observed, the decision in 35 T. L. R. which ruled that separate appeals should be filed by defendants having separate interest was published on 12-4-1094, more than one year before this appeal was filed. The filing of the appeal in a way repugnant to that ruling implies in our opinion want of due care and attention. If so, the delay cannot be excused. We are not forgetful in this connection of the fact that the result would hit the minor appellants hard and that the value of this appeal is not insignificant. But we cannot allow these considerations to influence us in applying the law, as the general public are expected to mould their actions in accordance with it."

The attention of their Honours does not seem to have been drawn in this case to the prior rulings of the court which I have already referred to. It will thus be seen that it is only bare justice to extend the application of the rule laid down in Section 5 and followed till the date of the Full Bench decision on 17th Kanni 1099 to cases that have been dismissed on the authority of this ruling.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : May I know whether the 13 T. L. J. case is not a Full Bench case which requires confirmation by the Sovereign?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : Yes. But the High Court can recommend. As I submitted, more than 20 appeals have been dismissed on the ground that such mistakes will not be excused. It may be objected that this provision that I am submitting will have retrospective effect. My submission is that there is really no question of retrospective effect at all in this case. Till the Full Bench ruling just referred to, the law was that such mistakes are excusable and after the coming into force of this Regulation the law will be that such mistakes will be excusable. So that till it comes into force, owing to a hard interpretation of the statute, the litigants will have to suffer. We are only trying to give the litigants a chance which they possessed before. It is not a case like that of paddy hypothecation bonds about which we raised our protest in this House. That question is quite different. There we sought to impose a new burden on the debtor by enacting that the 12 years' limitation rule should apply and there was no prior decision which held that 12 years was the period of limitation. This is not a case which seeks to impose a new burden. In fact our attempt is only to rectify a mistake. I therefore submit that the amendment may be accepted by the House.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. In the first place, if my friend had supported me in the last amendment I could plead that there would be a certain amount of consistency in viewing the question whether retrospective effect should be given under certain circumstances. Then perhaps I might have been consistently forced to accept Mr. Ramakrishna Pillai's motion. But the condition is different and I do not think that the House will stultify itself by accepting this amendment. What are the facts? In the last amendment the creditors admittedly were honestly under the

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[Mr. J. John Nidiry.]

impression that they would have 12 years. The District Court said that the period of limitation was 12 years and that has been the practice all along. But the High Court one fine morning said that it was six years. My idea was that those whose suits will have been barred should be given an opportunity to file their suits. The House has rejected the proposal and I must accept the verdict of the House as final. What does Mr. Ramakrishna Pillai want now? Nothing but retrospective effect. Not that there was anything wrong, not that there were *bona fide* creditors who were misguided, but capable vakils ill-advised them and the appellant had to lose his case ignoring for the present that it is the right, the vested right of a respondent to see that every decree that is given to him by the lower Court is sustained and upheld. That being the case, when an appeal is dismissed, that vested right of the respondent is sustained, and he could take advantage of the decree obtained by him and execute it. Mr. Joseph Panjikaran said, "We do not know how many persons there are who have advanced money on the property." In the same way if the respondent had got a property, he might have hypothecated or even sold the property on the strength of the decree obtained by him from the highest court in the land. My friend wants that there should be retrospective effect not from Kannf 1099 but from 3 years back. According to my friend, even if before 3 years, an appeal was dismissed and afterwards review petition was put in and rejected, even in that case, the appeal should be restored.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know when this Regulation is going to be passed?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) Why did you say three years from Kanni 1099? Irrespective of the date when it comes into force; that must have been the wording so that any appeal that is dismissed will be given effect to. Already there is much said against lawyers. I do not say that they wanted to ignore the vested right of just and *bona fide* creditors who advanced paddy on hypothecation bonds. I do not want that there should be such an impression getting abroad that we voted because we were mistaken and therefore we advised our clients like that. I therefore do not have the slightest doubt that the House will not stultify itself by carrying Mr. Ramakrishna Pillai's amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): If it is a mistake, can it be taken advantage of?,

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, that is always an advantage between a respondent and an appellant. Seeing that the appeal is filed against the decree, the party by whatever means would try his level best to nullify the effect of it.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Is there not a difference? In the one case it is the mistake of the party while the other is a mistake on the part of the vakil.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is why I say the difficulty is all the greater and the man ought to know better. He has got his sannad. The vakil is supposed to be the party's agent. He should see that such a mistake does not happen. But we have proceeded on the idea that the vakil's mistake shall be deemed sufficient cause for the delay in filing the appeal or presenting application. I do not think it may be deemed sufficient cause to give retrospective effect to nullify the decree that the respondent has secured on the strength of the Full Bench decision. Consistently with the amendment that was carried just before, I think that this amendment should be rejected.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Was not the vakil who appeared in the case a leading vakil?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Whether he be a leading vakil or a junior, it makes no difference. He may be a leading vakil. It may be honest advice that he gave. We are not concerned with that fact.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am tempted to speak on this amendment for two reasons. First of all, in discussing the previous amendment I made the observation that the world will think that because it is a vakil's mistake, this Council composed of many vakils takes an indulgent view of the matter. Several of my friends said "we are indifferent to that argument." I am glad that so far as this amendment is concerned, they virtually accept the observations and the arguments that I advanced in attacking the former amendment. The second reason is that Mr. Ramakrishna Pillai stands for a very dangerous principle. Courts with all their limitations exist for the protection of rights and when they passed a final decree, especially a decree of the nature contemplated in 13 T. L. J., a decree which has been affirmed by the Sovereign, to argue that that decree should be reopened and that a person who has got a decree should be made to lose the benefit—that is an argument which no lawyer can advance conscientiously. My friend, as has been rightly pointed out by Mr. Subba Aiyar, voted against the previous amendment. When such is the case, I am really unable to find how he can make up his mind and argue that a vested right—

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Is Mr. Velu Pillai aware of the grounds on which I voted against that amendment?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am not concerned with the grounds. There is the decision. What I say is that for one who voted against that amendment, to stand up and speak like that, is a pernicious principle. Sir, I think that is not proper. My friend pointed out that according to the explanation to Section 5 of the present Bill, a vakil's mistake was condoned practically. That relates to future mistakes and not to the past mistakes. If on some grounds, for this reason or other, a decree that has been confirmed by

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[Deputy President.]

the High Court and affirmed by the Sovereign is lightly brushed aside, if every case has to be reopened simply because my friend brings in an amendment, that will be going too far and this House composed as it is—I have once more to say—of gentlemen who know the particular aspect of the law—this House will certainly not pass such an amendment. It will be a mischievous principle, I will even say, a pernicious principle. I say emphatically that facts once set at rest must not be reopened. So far as future things go, even though I took the view that the explanation to Section 5 should be omitted, the decision of this House is binding upon every one and upon me and I have to bow my head. I request all my lawyer friends to vote against the amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have already given my reasons for holding that there is absolutely no inconsistency in my position. Mr. Subba Aiyar said that because Clause 34 was deleted, it was not proper that this amendment should be accepted by the House. I have already submitted my grounds for the position that I have taken in respect of paddy hypothecation bonds. My view has always been that the period of six years should apply to the case of paddy bonds and that our High Court is correct in arriving at the conclusion. There is absolutely nothing wrong in voting against Clause 34. My object in advocating the adoption of this amendment is not to introduce any new law but to remove the hardships caused to litigants from the date of the Full Bench ruling to the commencement of this Regulation. There is in fact no retrospective operation in these cases. What I contend is that the law was and ought to have been what we have now proposed. My friend Mr. Velu Pillai said that it was not proper that decisions already arrived at should be disturbed and cases reopened. I submit that clients whose cases have been dismissed on this technical ground need only be given an opportunity to have their cases heard on the merits.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Can he cite one instance anywhere, in British India, or in America or England, where in contemplation of a subsequent legislative enactment and under its operation, a decision confirmed by the highest court in the land has been reopened?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I suppose there is no contemplative enactment here requiring that all decisions should be reopened. The court would accept the appeals and condone the delay only if sufficient cause is shown; we have only provided that the mistake of Counsel is a sufficient cause for excusing delay. There is in fact no new law enacted by this Council. And what we are doing is only to explain the meaning of a clause that exists in the present Regulation also. My position is that there was the law here, but that the interpretation put upon it by the High Court is not right.

DEPUTY PRESIDENT: You are not in order in saying that the High Court has failed to interpret the law correctly. Their interpretation is final. You cannot question the decision of courts.

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): It is not that I am questioning the decision. My submission is that the interpretation should have been that such mistakes are excusable.

DEPUTY PRESIDENT: Perhaps in your own way.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether a review is not the proper procedure in such cases?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I am not sure whether a review will be admitted. For admitting a review, some specific reasons will have to be alleged as required by the provisions of the Civil Procedure Code. After hearing the arguments, the High Court has come to the conclusion that the expression 'sufficient cause' will not include mistakes of Counsel. It is not possible to say whether a review will be admitted or not under the circumstances of each case. It is the legislature that can properly be moved in such cases. Hence I press my motion.

The motion was put to the vote of the House and declared lost.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I demand a poll.

A poll was taken with the following result.

AYES—6.

1. Mr. J. John Nidiry.
2. Rev. Fr. Kuriakose Vettikkapalli.
3. Mr. C. Sankara Menon.
4. Mr. K. Parameswaran Pillai.
5. ,, A. Hoogewerf.
6. ,, N. Ramakrishna Pillai.

NOES—18.

1. Mr. I. C. Chacko.
2. ,, R. Dhanukoti Pillai.
3. ,, A. J. Van Ross.
4. ,, W. H. Pitt.
5. Rao Bahadur K. V. Rangaswami Aiyangar.
6. Mr. R. Krishna Pillai.
7. ,, K. George.
8. ,, S. Parameswara Aiyar.
9. ,, V. Subba Aiyar.
10. Mrs. Poonen Lukose.
11. Mr. J. Stephenson.
12. ,, K. Parameswaran Pillai (Ag. Director of Agriculture and Fishries).
13. ,, M. Raja Raja Varma.
14. ,, S. C. H. Robinson.
15. ,, M. R. Madhava Variar.
16. ,, T. K. Velu Pillai.
17. ,, Joseph Panjikaran.
18. ,, T. Lakshmana Pillai.

NEUTRALS—13.

1. Mr. N. Kumaran.
2. ,, T. Kumara Pillai.
3. ,, Tariatu Kunjitomman.
4. ,, P. Parameswaran.
5. ,, P. K. Narayana Pillai.
6. ,, N. Padmanabha Pillai.
7. ,, M. N. Pillai.
8. Mr. P. T. Thomas.
9. ,, A. Govinda Menon.
10. ,, Paul V. Daniel.
11. ,, T. M. Chidambaratanu Pillai.
12. ,, C. P. Kochukunju Pillai.
13. Khan Sahib M. K. Khadir Pillai.

The motion was declared lost.

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[Mr. N. Ramakrishna Pillai.]

## THE CIVIL PROCEDURE CODE AMENDMENT BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to present the report of the Select Committee on the Civil Procedure Code Amendment Bill and move that it be taken up for consideration.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, I beg to second the motion, and in doing so I beg to say a few words, if I am in order.

DEPUTY PRESIDENT: The motion is to take the Select Committee's Report into consideration.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I do not propose to speak about any of the sections or any of the changes effected by the Select Committee. All that I wish to say is that the Bill that is now presented after the Select Committee stage is one of the youngest children of a very high order of legislative capacity. Mr. Subba Aiyar has been the Law Member of this Council for 12 years and I may observe, Sir, that it seldom falls to the lot of any Law Member to pilot so many Bills during the course of such a period. I remember that even those great legislators in the Imperial Legislative Council, Sir Henry Maine, Whitley Stokes, Fitz James Stephen and Macaulay were not able to do so much legislative work in such a variety of subjects as my learned friend Mr. Subba Aiyar. In the Select Committee stage, when we have had abundant opportunity of threshing out details of this measure, Mr. Subba Aiyar's services have been of very valuable use. I think, Sir, that the report of the Select Committee, which is the result of very anxious deliberation on the part of several members who had been appointed on the Committee, is satisfactory, and the number of amendments is also very small. I therefore second the motion and hope that the Select Committee's report will be adopted.

The motion was carried.

***Clauses 1 to 7.***

DEPUTY PRESIDENT: There are no amendments to Clauses 1 to 7, and I take it that the House agrees to those Clauses standing as part of the Bill. The question is that Clauses 1 to 7 form part of the Bill.

The motion was carried and Clauses 1 to 7 were added to the Bill.

***Clauses 8 to 30.***

DEPUTY PRESIDENT: There are two amendments in clause 8, one by Mr. N. Ramakrishna Pillai and one by Mr. G. Parameswaran Pillai. Mr. Ramakrishna Pillai may move his amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): I beg to move that Clause 8 be deleted. My reasons are that no such restriction as is made in the Clause should be maintained with regard to Civil Suits in respect of Service Inam lands and Kandukrishi lands. So

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